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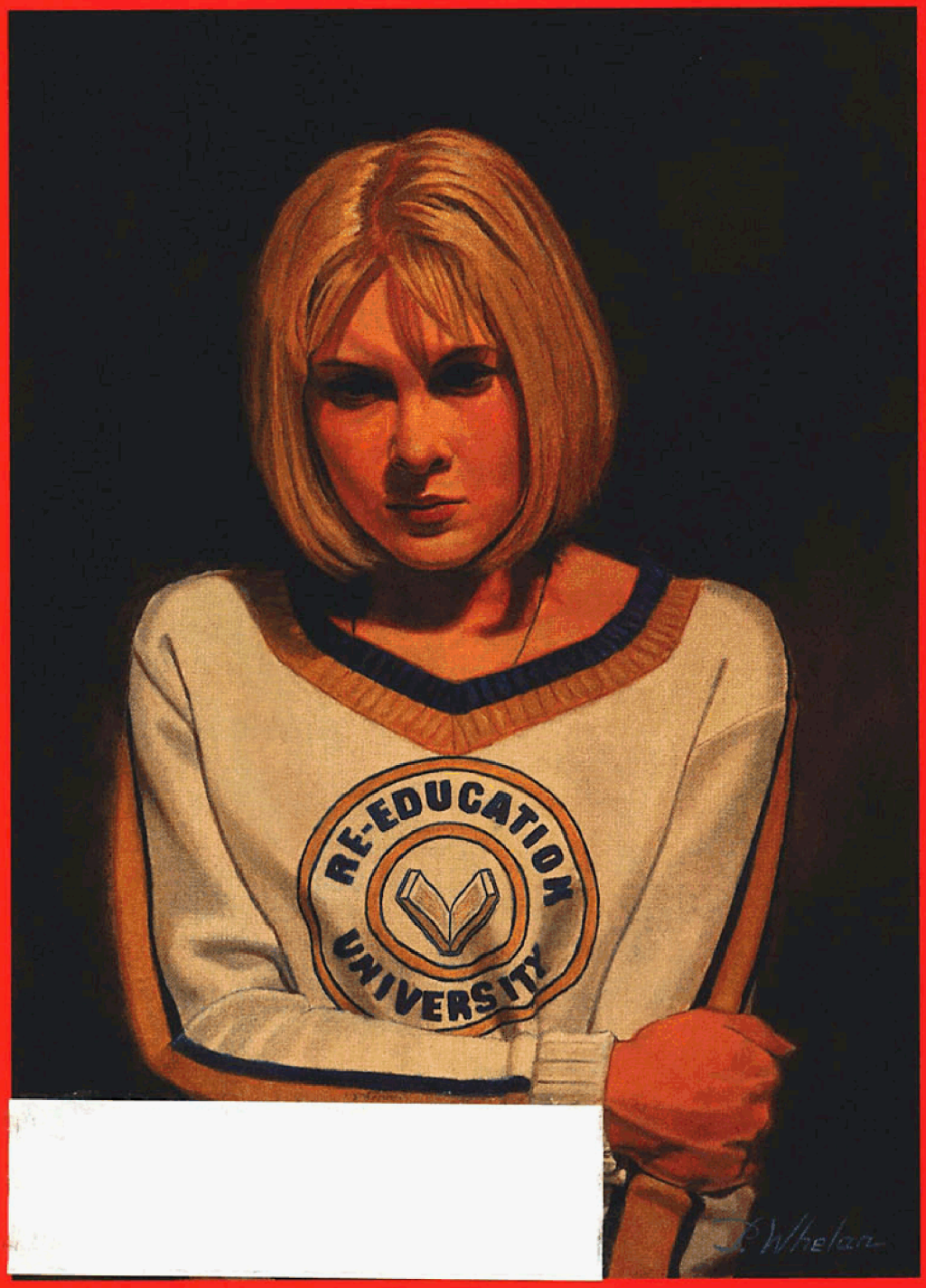

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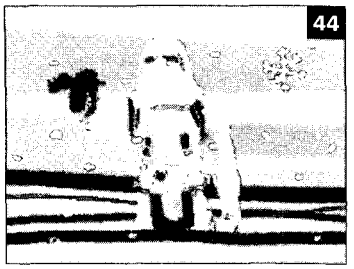

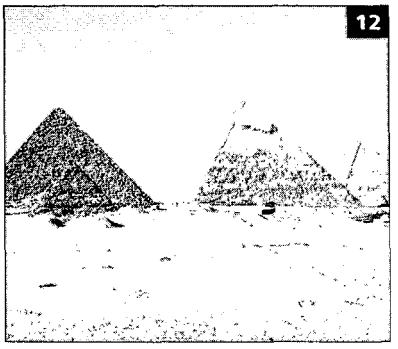

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Prescription for Trouble

Online pharmacies challenge traditional medical models, and the regulatory backlash threatens broader Internet freedoms.

By Virginia Postrel

Ah, the Internet! A new world of pure thought, free of the limits and coercion of the physical world. "Ours is a world that is both everywhere and nowhere, but it is not where bodies live," wrote John Perry Barlow four years ago in "A Declaration of the Independence of Cyberspace."

Barlow had no monopoly on Internet euphoria—the idea that cyberspace is too intangible, too slippery, too ubiquitous to be controlled by government. Even today, sober analysts make much the same argument in less hyperbolic language, and technologists talk about "building the future" to bypass political barriers.

But human beings do not exist apart from their bodies. We are matter-bound creatures. And given a tool as powerful as the Internet, we soon turn it to the service of our physical selves.

Hence the latest clash between Internet dynamism and government controls: the regulatory attack on online pharmacies that don't honor traditional gatekeeping procedures.

Over the past year, attorneys general and medical regulators in several states have gone after online pharmacies that allow customers to obtain prescriptions by filling out a questionnaire rather than seeing a doctor in person. They've obtained injunctions and levied fines, driving such online pharmacies out of their states or even out of business.

In one case, the Illinois Department of Professional Regulation temporarily revoked the license of a physician, Robert Filice, who reviewed questionnaires and issued prescriptions for Viagra without seeing patients. In response to the state's action, Filice issued a statement saying that he was guilty only of "being a pioneer in a new and unexplored area" and that regulators had taken his license "with the hope and intention of crushing innovation and seeing to it that as a result of his experience no other qualified, competent and caring physician will dare enter the area of online medicine." (Filice was eventually fined $1,000 and given two years' probation for "unprofessional conduct.")

Now President Clinton is calling for new federal laws to require pharmacy Web sites to get licenses from the Food and Drug Administration before they can go online—a chilling precedent. He's also proposing large new federal fines, up to $500,000 per sale, for selling prescription drugs "without a valid prescription." To enforce these new rules, the administration would give the FDA subpoena powers and $10 million in fiscal 2001.

The same desires for independence, expression, and identity that cyberutopians like Barlow celebrate in the world of bits operate in the world of cells. People want control not only of their words and thoughts but of their bodies. We're a long way from having such control—our bodies have a nasty habit of failing us—but biology is clearly the next great technological frontier.

Already, medicine has gone beyond the traditional realm of curing illnesses to give us tools for enhancing our capabilities. Rather than hewing to a clear-cut model of "disease," we are increasingly changing biological conditions we simply don't like. Sometimes we treat these conditions with pharmaceuticals, such as birth control pills, hormone replacement therapy, or Viagra. In other cases, we just wax our eyebrows or dye our hair.

Once we leave the disease model, the doctor-patient relationship changes. When a condition does not require a diagnosis, there is less detective work involved, and hence less expertise. Certainly, physicians usually know more than patients about possible treatments, just as hairdressers know more about color combinations. But the Internet makes medical information accessible and abundant, and in many cases patients would rather take care of themselves. They may have already seen a physician and just want more of what was prescribed at that time. Or they may prefer the privacy and convenience of a Web-based medical consultation to the invasiveness and hassle of a physician visit.

Although regulators tend to idealize in-person exams, there are undoubtedly risks to buying medicine without one. But physicians don't have perfect foresight, nor do they necessarily get full information from their patients. And they are often rushed. A standard "well woman" checkup can last as little as 10 minutes, hardly time for any in-depth discussions.

There are also dangers to health and happiness in not letting people buy drugs without a doctor's intervention. How many people kept smoking because nicotine patches or gum were available by prescription only? How many agonizing attacks of arthritis or menstrual cramps did people endure because ibuprofen wasn't available without a doctor visit? Prescription contraceptives mean more unwanted pregnancies. And even a pure paternalist ought to acknowledge that dispensing real Viagra based on a questionnaire is a lot less dangerous than creating a street market in the stuff, complete with counterfeit pills and turf battles among dealers.

Many different relationships among patients, doctors, and drugs are possible and desirable. As in so many other areas of life, the Internet encourages experimentation. Questionnaire-based pharmacies operate between the traditional prescription and over-the-counter models. As technology advances further, enabling physicians to do Web camera exams, for instance, more new methods will emerge. Rather than serve patients, however, technocratic gatekeepers seem mostly determined to protect the regulatory status quo—to dictate a single relationship and

method of practice for all time.

Government officials claim that any pharmacy site that deviates from the traditional model is a "rogue" that victimizes customers. This attitude means that Internet pharmacies are more dangerous than they need to be. State enforcers have made it clear that above-board physicians like Dr. Filice and established pharmacies like The Pill Box, a five-store San Antonio chain whose Web site sells several popular drugs, including Viagra and Claritin, will be the first targets of attack. Fly-by-night operations are hard to identify and prosecute. It's easier to make examples of dissidents who operate in the open. Regulatory threats also discourage information that would benefit consumers, such as the names and verifiable qualifications of physicians and pharmacists.

Keepers of the conventional wisdom have reacted with horror to questionnaire-based prescriptions. But these upstart pharmacies in fact return to consumers the choice promised by supporters of the 1938 Food, Drug and Cosmetic Act. That law established federal requirements for drug safety and labeling but exempted prescription medicines from the labeling rules. The bill was sold as a way to help consumers make informed choices about their medications, not to transfer those choices to physicians, drug makers, and regulators. The goal, W.G. Campbell, then head of the FDA, told a Senate committee, was merely "to make self-medication safe."

The government broke that promise. As MIT economist Peter Temin recounts in *Taking Your Medicine*, his 1980 book on drug regulation, "The agency moved within six months of the bill's passage to curtail self-medication sharply and thereafter used a substantial and increasing proportion of its drug resources to enforce its imposed limitations." The agency created a new class of medicines that could be sold only by prescription—a category that has greatly expanded over the succeeding decades. It "appointed doctors as the consumers' purchasing agents," writes Temin.

When people are sick, they're often perfectly happy to have an expert make such decisions for them. But the new world of medicine means that "patients" aren't necessarily sick, and the Internet offers them the chance once again to choose how to buy their medications and from whom. Instead of trying to stamp out online experiments, the government should use the opportunity to start keeping its promises. ◆

Charter Course

As vouchers go to court, charters erode the old-school monopoly.

By Nick Gillespie

"Things fall apart; the center cannot hold," wrote W.B. Yeats in 1920, in his apocalyptic poem "The Second Coming." The famous line is a fitting epitaph for the 20th century, though experience has robbed it of its dark resonance. All sorts of bids for centralized, consolidated power in politics and economics thankfully came up short in the last century. At the start of the 21st century, command-and-control models are blessedly out of fashion everywhere.

Everywhere, it seems, except in public education, where an old guard still struggles to defy the turn toward decentralized decision making that is energizing American society in myriad ways. In 1940, there were 117,000 public school districts in the U.S.; by 1970, there were 18,000; today the figure stands at about 14,800. Like Yeats, who feared that "anarchy" would follow the collapse of the center, public education's old guard is terrified by individual empowerment.

The most obvious battleground is school choice. The old guard was heartened by the decision in late December enjoining Cleveland, Ohio's popular and controversial voucher program. The program, enacted by the state legislature in 1995, gives some 3,500 low-income students in grades K–6 up to $2,500 each to enroll in any of 56 private schools that accept the vouchers. After the Ohio Supreme Court declared last June that the plan did not violate the U.S. Constitution's Establishment Clause, opponents took their case to federal court, where they found a more sympathetic audience in U.S. District Judge Solomon Oliver Jr.

Noting that over 80 percent of the participating schools were religious, Oliver concluded that "the program has the effect of advancing religion through government-supported religious indoctrination" and ruled the voucher program unconstitutional. Mindful of the fallout last summer when he issued a temporary injunction against the program just days before the school year began, Oliver this time has delayed enforcement of his order until the U.S. Court of Appeals for the 6th Circuit rules on the case (a decision is unlikely until some time after June). Since both sides have vowed to pursue all appeals, Oliver's ruling sets the stage for an eventual U.S. Supreme Court decision that may well settle not simply the fate of the Cleveland program but the larger issue of tax dollars being spent in religious schools.

Given its recent rulings on similar topics, it's unclear whether the nation's high court will ultimately certify or quash the Cleveland program. But even if Oliver's decision is upheld in the end, power is already leeching out of the system there, due to another, less dramatic reform. Ohio, like 31 other states and the District of Columbia, has a robust and rapidly growing charter school community that is slowly but surely subverting traditional public schooling.

On the face of it, charters—essentially, public schools that are exempt from most state education laws and regulations—appear less radical than vouchers. Hence, they are more palatable politically. But like vouchers, charters inject unmistakable elements of choice and competition into primary and secondary education; they take power from educators and deliver it to parents. By giving parents and students a ready exit from existing schools, charters

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That's why the response to charters has been phenomenal. The first charter school in the country opened its doors in Minnesota in 1992; during the 1998–99 school year, close to 1,700 charters nationwide educated about 350,000 students. More than 500 new charters are likely to open for business during the 2000–01 academic year.

The coincidence of the voucher case with a charter program makes Ohio a particularly relevant example of how charters work—as does the state's reputation for typifying a bland "middle American" consensus. Ohio's experience with charters underscores that, with or without publicly financed vouchers, the old-school monopoly will continue to face growing pressures to substantially restructure itself in the face of competition.

In 1997, Ohio allowed any nonprofit organization that satisfied certain criteria to start a charter school in seven of the state's eight largest urban areas. After less than two full years of operation (the first charters opened in the 1998–99 academic year), close to 50 charters in Ohio enroll about 10,400 students in places ranging from Oak Tree Montessori in downtown Cincinnati (which serves mostly black students from preschool through third grade) to the Northwest Ohio Building Trades Academy in Rossford (which provides a school-to-work program for high school juniors and seniors interested in the building and construction trades) to the Aurora Academy in Toledo (which is dedicated to "at-risk" low-income children and dispenses with traditional grade levels in favor of a "multiage learning community").

There have, of course, been problems. For instance, the Ohio Department of Education has moved to revoke the charter of a military-style school in Columbus that failed to renovate its school building properly and issue required textbooks. Elsewhere, there have been reports of students attending classes in buildings lacking sprinklers or adequate fire alarm systems. Additionally, some members of the state Board of Education, which grants the charters, have complained that they don't always have adequate time to review applications.

These issues are not trivial, but neither do they damn the charter system. If anything, they call attention to the varied experiments now taking place. If there were no problems, that would suggest that the state wasn't granting enough charters. An experiment with no mistakes is an experiment whose outcome has been predetermined—and whose point is less than pressing.

In spite of such concerns, charters have been welcomed with open arms by students and parents in Ohio. Indeed, total enrollment is expected to more than double next fall, when charters will be allowed in the state's 21 largest cities and in the state's weakest school districts. By the time the Supreme Court does rule on the Cleveland voucher plan, the landscape of public education will already be markedly different.

Certainly, it is significant that Ohio—a state held up (or derided) as defining mainstream America—has enthusiastically embraced charters. If it's happening there, it's happening everywhere. The "center" is not holding, but something very different from "anarchy" is emerging in public education.

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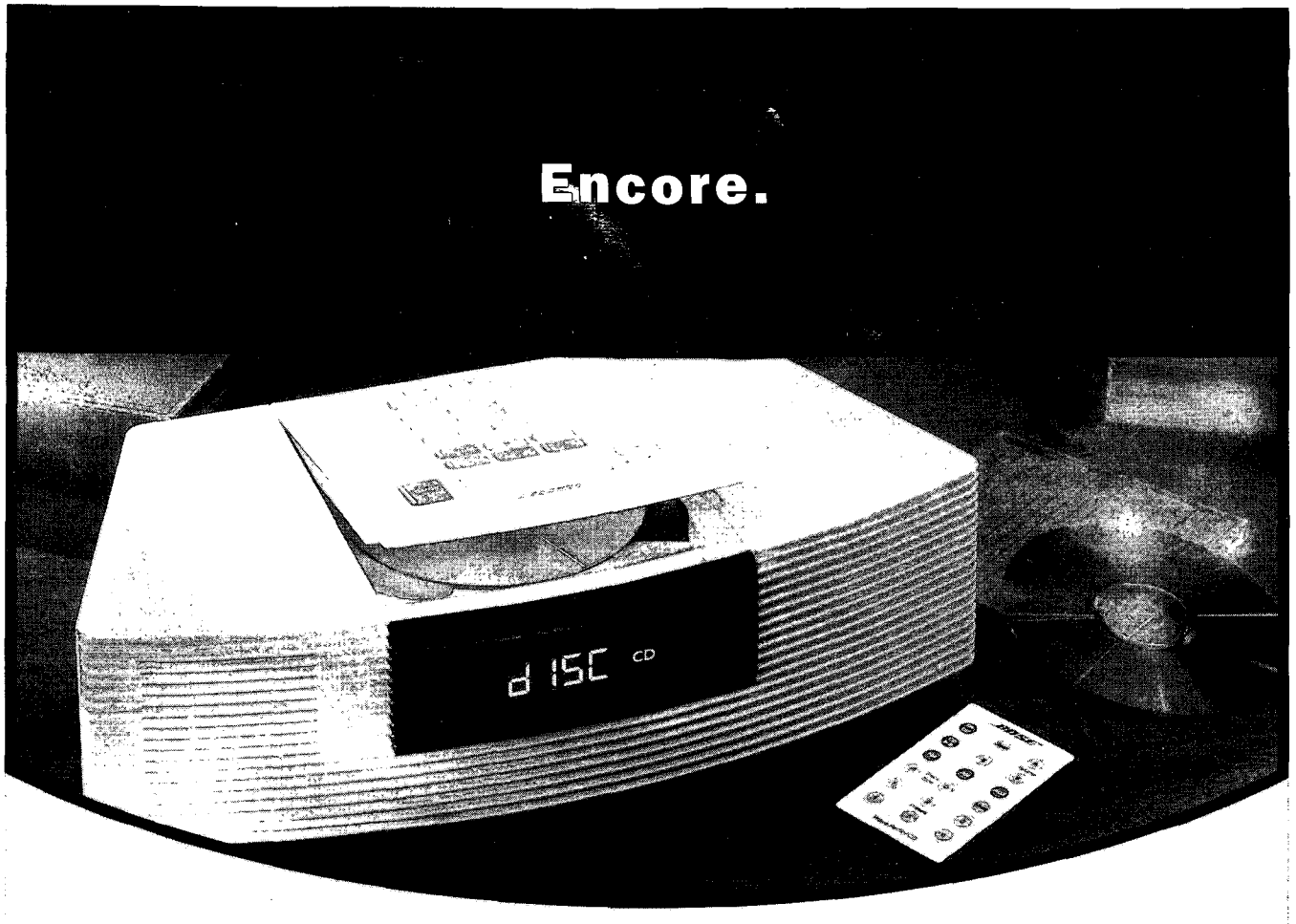

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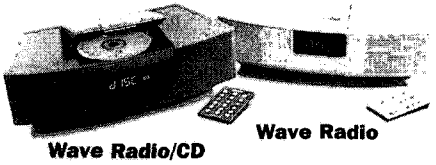

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SPECIAL BOOK ISSUE
SUSAN FALUDI'S LIMP HISTORY BY VIRGINIA POSTREL
REASON
WELCOMING THE BIOLOGICAL CENTURY
GREAT BOOKS ON THE FUTURE OF LIFE

More Reads on the Future

Gregory Benford and I are both physicists who write science fiction, the literary genre that focuses on change as it affects the human condition and on the human response to change. In his book symposium contribution ("Future Shocks," December), Professor Benford refers to the bioengineering of Huxley's *Brave New World.* However, Mary Shelley's *Frankenstein,* written decades earlier, sets the stage for much of what has followed in the biomanipulation of life. *Frankenstein* epitomizes the twin problems of science-driven change: the dangers of loss of control and of public overreaction. Which should we fear more, the shambling monster or the angry villagers, waving their torches as they converge on the castle?

In the light of recent history, from Dolly the sheep to gene-engineered soybeans and human stem cells, it is clear that out-of-control science is not the central problem. There are many open questions in bioethics and human genetics, but these are in the spotlight, the focus of ongoing debates, and the target of labyrinthine laws and regulations. The more serious problem is the inability of much of the population to understand and accommodate science-driven change and to devise rational strategies to deal with it.

I live in Seattle, which hosted a meeting of the World Trade Organization in December where the angry villagers gathered. European Greens traveled a third of the planet's circumference to protest this country's agricultural use of genetically modified soybeans and corn. I don't challenge their right to protest, but I wish they would find a better cause. Selective breeding using random (and often chemically induced) mutations has been an important part of agriculture for centuries.

It is not Frankenstein and "frankenfood" we should fear but the mob of angry villagers now converging on the castle of scientific progress.

John G. Cramer
Professor of Physics
University of Washington
Seattle, WA

Each year when I read REASON's special December book issue, I like to play a little game and guess how I would answer the question before reading everyone else's. This year, I was somewhat disappointed that no one mentioned *Nanomedicine, Volume I,* by Robert Freitas (Landes Bioscience, 1999).

The book, which has been available since late October, is very technical and detailed, and it hits the reader over the head with voluminous citations. The book has an edge of hard engineering through direct physical manipulation rather than the softer feel of interventions based on guiding unfolding organic processes. It represents early groping in a new field, and years from now it may have a quaint feel.

Nonetheless, *Nanomedicine* is probably the most important work of the year on biotechnology. Its first two chapters are accessible to the interested non-technical reader, and it carefully walks through the foundations of appropriate medical ethics for technologies that can radically restore and alter human life. Its huge technical scope helps the reader glimpse a future where we can not only change a few genes but repair and redesign a physical body down to molecular detail.

Tom McKendree
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Though I appreciated many of the book recommendations in the recent symposium, I was somewhat disappointed by the emphasis on sociobiology and the implicit commitment to determinism in many of your writers' selections.

I was surprised by the partiality to E.O. Wilson's *Sociobiology: The New Synthesis.* For one thing, Wilson's synthesis is hardly new; it's decades old. More importantly, as applied to human action, its thesis has been subjected to ample and devastating criticism, one of the most effective by Philip Kitcher in *Vaulting Ambition: Sociobiology and the Quest for Human Nature* (MIT Press, 1985), which goes unmentioned in the symposium. Thus Michael Ruse badly misses the point when he implies that it's a good thing that Wilson's book causes "consternation in the ranks of social scientists, feminists, Marxists, liberals, and many others." In fact, Wilson's thesis about human action merits outright dismissal by anyone who rejects the idea that human agents are controlled by their genes—or, indeed, by anyone who rejects Professor Ruse's apparent belief that sociobiology shows us that "the whole of life is a sham."

That brings me to the topic of free will. Oddly, neither the term nor the concept

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are much discussed in the symposium despite its obvious connection to the issues covered there. Though some of your authors criticize the "nature vs. nurture" dichotomy, Deirdre N. McCloskey seems to be the only one to see the crucial point that free will provides the way out of it. It's worth noting, however, that of the many philosophers Professor McCloskey cites, two—Susan Wolf and Philippa Foot—are renowned defenders of determinism. Significantly, despite her recognition of the relation between nature, nurture, free will, and character, Professor McCloskey doesn't mention a single explicit defense (or defender) of free will in her article.

The *locus classicus* of an individualist defense of free will is, of course, Ayn Rand's "The Objectivist Ethics" in *The Virtue of Selfishness*—a profoundly "biological" work that also goes unmentioned in the symposium.

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Crossing Words

I found "From Donald to Deirdre" (December) informative and thought-provoking, and I wish the author well in what seems to be her true identity.

Yet there are two points which, unfortunately, come into sharp conflict. First, the gist of the article seems to be that "crossing," as the author calls it, is and should be an elective process. Thus she argues the classic libertarian view, which I share, that a person's life is his or her own and she or he has the basic right to make decisions regarding it.

However, she also derides Blue Cross for failing to pay for an extremely expensive set of elective procedures. Certainly no insurance company could survive in the marketplace if every elective procedure were covered. What if I decide that the "real" me needs a larger penis or larger breasts? Should these services also be covered? Can we even begin to calculate the costs?

The author then compounds the logical error by pointing out that the operations are reversible, though at an even higher cost than the original procedures. I suppose Blue Cross should pay for that, too? As a Blue Cross policyholder (and shareholder) I can't help but wonder what would happen to my premiums, to say nothing of the company's ability to sustain its business, if it did.

I support the author's right to make her own choices. But if her situation is not, as she says, a disorder or disease but rather a matter of choice, then it's not a health matter, and no health insurance company should have to pay the costs of that choice.

Michael D. Wolk
Boston, MA

Fears of a Clone

Ronald Bailey's "Petri Dish Politics" (December) paints a grim picture of medical advancement if we let the statists get the best of us. But perhaps what's more frightful is that their distrust of stem cell research is nothing new.

When Dolly the sheep gained international fame for her unique genetics—or, more precisely, the lack thereof—I was working at a division of CBS News and listened to senators and leaders in D.C. debate cloning research for six hours. It was an exercise in cowering. Our would-be leaders, Republicans and Democrats alike, spoke in the hellfire-and-brimstone tones of demagogues warning of Armageddon.

Interestingly, the only person I heard support cloning research—and who chastised his small-minded comrades—was Sen. Tom Harkin. The Democrat from Iowa is one of the two leading Senate proponents of human stem cell research.

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The physicist Steven Weinberg once remarked that until we have truly solved a problem we do not know how deep it really is. In this spirit, we stand at two removes from the brave new world of biotech hailed by REASON: We don't know how to do the wonderful things that its contributors anticipate. And even if we did, we have no expectation of doing them on a mass scale.

In vitro fertilization is a case in point. Its significance does not lie in having made sex obsolete, for it is costly and cumbersome as a medical procedure. Rather, its importance lies in the joy it has brought to couples, who have had the babies that they otherwise would have been denied.

Similarly, if cloning becomes feasible, its significance will also lie with individuals. Imagine a woman who bears a daughter that is actually her identical twin or another who loves her husband so much that she bears not his baby but his clone.

An analogy to 20th century medicine is in order. We have heart transplants and other miraculous interventions. Yet while these have saved lives and restored health, they have contributed little to improvements in life expectancy. The largest contributions have resulted from clean water, improved nutrition, and campaigns against endemic diseases. In the new century, the most important medical advances may well be similarly undramatic.

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Tactical Reality

Kudos to REASON and Thomas Hazlett for his column "Hayek's Heroes" (December). As a former "grunt," I readily recognize the need for military decisions to be made by the man on the spot, as opposed to commanders and doctrine whose perceptions are only loosely based on reality. The soldier, by contrast, has plenty of reality (sometimes too much of it) and uses his knowledge, training, and perceptions to impact that reality.

The column brought to mind two quotes from The *11th Special Forces Group Field Order of Battle Handbook*:

"The reason that the American Army does so well in wartime is that war is chaos, and the American Army practices chaos on a daily basis." —an unnamed German general

"One of the serious problems in planning against American doctrine is that the Americans do not read their manuals, nor do they feel any obligation to follow their doctrine." —from a Russian document

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I am afraid that I cannot agree with Thomas Hazlett on Hayek and D-Day. I certainly agree with his larger point about dispersed information and our debt to Hayek on that score. I even agree that application of this principle is especially effective on battlefields. Unfortunately, I do not think that one can say that the democratic Anglo-American armies applied this principle while the totalitarian Germans did not.

Indeed, Stephen Ambrose's work notwithstanding, the generally well-established consensus among military historians is exactly the opposite, i.e., that it was (unfortunately) the Germans who showed far more initiative on the battlefield. Certainly the Germans had cumbersome and bad command arrangements for the Normandy campaign, and Hitler did hamstring German operations with restrictive orders. But at the battlefield level, the Germans were far more flexible than we.

In fact, the major debate among historians about the Normandy campaign is why it took the Allies so long to break out, and what this says about the relative quality of the German and Allied armies. It would be nice to believe that democracies inherently produce better soldiers. Unfortunately, this is simply not true.

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As a Marine Corps infantry officer (now serving in the Reserves), I agree wholeheartedly that the strength of current U.S. doctrine is our acceptance of decentralized decision making. The junior officers and noncommissioned officers are empowered to take whatever actions they deem appropriate to accomplish the "Commander's Intent." Rather than being told what to do and how to do it, subordinate leaders are told what the commander envisions as the desirable "end state of the battlefield" and are set loose to accomplish it.

I have one minor complaint, however, concerning Mr. Hazlett's portrayal of the Wermacht as representing centralization of command and the U.S. Army representing decentralization of command. I think he's painted the two armies with too broad a brush. While the German division and corps commanders indeed found their hands tied by the sometimes baffling dictates of Hitler, at the battalion and company level German junior officers and NCOs had at least the same degree of autonomy as their American counterparts. In fact, it was official German doctrine that the leader on the spot could disobey orders when the situation called for it.

In my opinion, we owed our victory at Normandy more to high-level blunders by the German command combined with their low-quality troops than to our own good, small-unit tactics and decentralized decision making.

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Thomas Hazlett replies: Many thanks for these (and other) thoughtful letters on "Hayek's Heroes." As for the areas of agreement, I agree. As for the areas of disagreement, I shirk. As I noted in the column, my take on D-Day was drawn from Stephen Ambrose's history. The interesting points of contention would be usefully debated with Professor Ambrose. I deserve no credit and scamper from any blame—a cowardly baby boomer contrast to the heroic actions on display June 6, 1944.

What Might Have Been

I very much enjoyed reading Charles Paul Freund's article on counterfactual history ("Spilt History," December). It was therefore especially disappointing that he neglected to mention the one work that does the most effective job of countering the deterministic in historical studies, Karl Popper's *The Open Society and Its Enemies.*

Popper makes an explicit connection between determinism and Marxism/totalitarianism that would strongly support many of Mr. Freund's points. His work is also important because it makes the same connection between deterministic history (historical teleology, or historicism) and the misunderstanding of science that justifies historicism as having more authority. The phenomenon, I believe, is known as "physics envy," and it is entirely misplaced.

My own hook for this is Isaac Asimov's classic *Foundation* trilogy, in which he invents "psychohistory." Psychohistory treats history mathematically once there are a sufficient number of individuals acting, just like thermodynamics makes deterministic predictions about sufficiently large numbers of atoms. The difference between molecules and people is, it seems, trivial.

This is a complex and wide subject, involving both common expectations for our lives and the sometimes silly "science wars" in the academies. It is endlessly fascinating, and I want to express my appreciation that Mr. Freund did a good job of making the case that historicism is tied to this misunderstanding of science.

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Charles Paul Freund's article on "what ifs" was a model of cool erudition and refreshing open-mindedness—just the sort of work one looks for in REASON. If anything, he may have underestimated the significance of "what if" thinking in guiding our policies. I'm thinking in particular about Vietnam and the "Vietnam syndrome."

What if LBJ had possessed a crystal ball in 1964 and had foreseen all the agony, outrage, and brutality that his Vietnam policy would produce and, most important, the eventual defeat of our side? Doves say that LBJ would never have embraced such a fate. Rather, he would have found a way to stay out. Hawks say LBJ would have or should have upped the ante militarily and the U.S. would have prevailed.

Both sides agree that LBJ made a big mistake. Most of the debate has been whether he was blinded by some personal flaw or was fooled by his generals. I've heard many people assert that either policy would have been better than the no-peace/no-victory strategy we actually followed. This is a sort of double counterfactual built on a super horror of the factual.

In our can-do country, an unhappy result *must* be the result of a mistake. I suspect LBJ would not have taken either alternative, no matter how much he saw of the horror that awaited.

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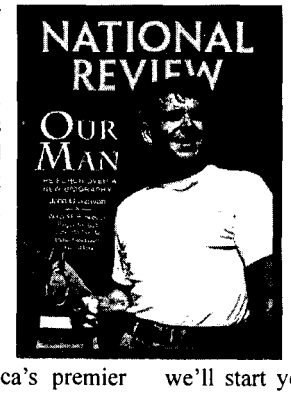
SOME OF THE 2000 REASONS WHY YOU NEED NR IN 2000

Bill Clinton, Peter Jennings, Al Gore, The New York Times, Hillary Clinton, Larry King, Dan Rather, ABC, Bryant Gumbel, Maxine Waters, James Carville, Bill Moyers, CNN, Robert Torricelli, Janet Reno, Frank Rich, Bernard Shaw, Ted Kennedy, Jane Pauley, Al Sharpton, Anthony Lewis, Ted Turner, Tom Harkin, Spike Lee, Jack Kevorkian, National Public Radio, Al Hunt, Madeleine Albright, Warren Beatty, Edmund Morris, Time, Nina Totenberg, Bob Schieffer, David Bonior, Eleanor Clift, Jesse Jackson, Christopher Dodd, Judy Woodruff, Bill Richardson, Sam Donaldson, Greta Van Susteren, Kate Michelman, Jerrold Nadler, Garrison Keillor, Katie Couric, George Stephanopoulos, Larry Flynt, Sidney Blumenthal, Maureen Dowd, Susan Faludi, Jesse Ventura, Tony Cohelo, The Washington Post, Webster Hubbell, CBS, Bill Bradley, Geraldo Rivera, PBS, Jill Ireland, Newsweek, Tom Daschle, Tony Hiss, Garry Wills, Tom Brokaw, Joe Lockhart, Patrick Kennedy, Joe Conason, NBC, Richard Gephardt, Steve Roberts, Alan Dershowitz, Molly Ivins, Clarence Page, Ross Perot, Susan Sarandon, 60 Minutes, Bernie Sanders, Margaret Carlson, Mort Zuckerman, Barney Frank, Tim Russert . . .

ELECTION-YEAR BALANCE

LIBERAL MEDIA BIAS. It rears its ugly head every day. Twisting, turning, and contorting the news. Making saints of favored "progressives" and sinners of anyone who refuses to worship today's sacred cows. Exaggerating the microscopic while ignoring the obvious. Spinning events, and your head!



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WSARSN

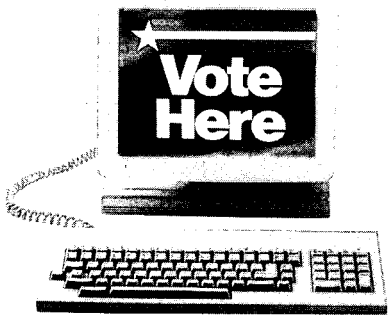
Point and Cast

By Jeff A. Taylor

Come March, the Arizona Democratic Party plans to let voters cast their ballots over the Internet in the state's presidential primary. It will be the first time cybervotes will be used in a real, buttons-and-balloons political contest.

Paper ballots will be used as well, but the hope is that cybervoting will appeal to voters too busy to trudge to a polling station to participate. One potential problem: Party officials have not yet supplied details on how they will ensure that some 8-year-old in Flagstaff, Arizona, doesn't vote 5,347 times for Bill Bradley.

But the party seems committed to the idea. It is already hyping the e-primary on its Web site, and pulling it off would be a great way to



demonstrate that the party gets the Internet and understands its potential.

If only that were so with self-appointed experts. "The technology to do what they want to do is child's play. The question is, 'Is Bubba ready for it?'" Phil Noble of Charleston, South Carolina, who bills himself as an Internet political consultant, told *The Washington Post.*

I Want My Skin TV

By Michael W. Lynch

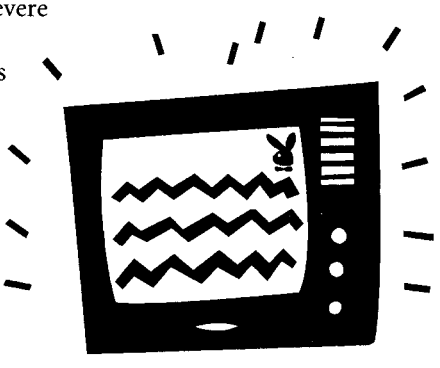
Imagine if Congress mandated that *Playboy* subscribers could peruse their monthly morale booster only between 10 p.m. and 6 a.m.

The 1996 Communications Decency Act imposed much the same restriction on viewers of sexually explicit cable TV channels. Addressing the problem of "signal bleed," which can cause scrambled channels to appear clearly on a non-subscriber's television set, Congress ordered cable TV operators to fully scramble or block any channel that is primarily dedicated to sexually oriented programming. If that can't be accomplished, the cable companies must turn the signal off from 6 a.m. to 10 p.m.

The law was in effect from May 1997 until December 1998, when the U.S. District Court of the District of Delaware enjoined it in response to a challenge by Playboy Entertainment. During that time, every cable system in the country which experienced signal bleed simply turned off the Playboy Channel, Spice, and the like until 10 p.m. "If you had a monthly subscription, and there were some 150,000 of those before the law, you lost two-thirds of the value of your purchase," notes Robert Corn-Revere, an attorney for Playboy Entertainment.

The blanket block isn't even necessary, Corn-Revere says. Another section of the CDA already requires cable operators to fix the problem for anyone who complains. There are also private solutions, such as setting the TV to block the channel or programming the remote to skip over it. As for protecting children, two-thirds of U.S. homes have none.

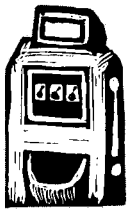
Corn-Revere argued the case before the Supreme Court in November. A decision is expected by June.



Balance Sheet

By Jeff A. Taylor

ASSETS



▲ **Y2OK.** Slot machines in Delaware, customs offices in Gambia, and some temporary blindness for Uncle Sam's spy satellites. Such is the awful, actual toll of the Y2K bug. The feds likely got their money's worth with the $8 billion spent on Y2K readiness. For the private sector, the tens of billions spent on new software should pay off in productivity gains later.

▲ **Math Terror.** Despite the recent media attention, terrorism remains the remotest of threats to Americans. Dying at the hands of a terrorist is a one-in-15-million proposition, the RAND Corp. notes. Compare that to a one-in-6,000 chance of dying in a traffic mishap.

▲ **Gamed System.** Computer gamers go to market. Programmers who honed their coding skills on "dumb" games like Doom and Quake create new companies. One, 10-K Wizard Technology (www.10kwizard.com), uses a powerful search engine to trawl SEC filings for key words free of charge.

▲ **eVote.** Americans want a high-tech democracy. A *Wall Street Journal*/NBC News poll finds that 53 percent of the respondents want to be able to vote over the Internet. The campaign and the candidates have long been virtual: Why not the balloting?

▲ **Polling Papers.** The crush of a presidential campaign smokes out Vice President Al Gore on medical marijuana. Gore breaks with the Clinton administration and backs an option for doctors to prescribe ganja to ease pain and suffering.

▲ **Great White Dearth.** The single-payer Canadian health system is on life support. Quebec sends hundreds of cancer patients to the U.S. for treatment, and in Ontario the waiting list for MRIs is so long that humans will try a private veterinary clinic. More than 6,000 Canadian nurses have decamped to the United States.

French Farce

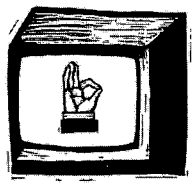
By Charles Paul Freund

France's filmmakers are among the world's most protected species—and, not coincidentally, among its most endangered.

French theaters must show French films for a minimum number of weeks each year, while French TV must devote a minimum number of hours to such films (with a separate quota for prime time). Nonetheless, audiences—yet to be state-mandated—have continued to dwindle, and now France's

▼ Cashing In. State tax revenues grew nearly 6 percent in 1999, the Center for the Study of the States says. Personal income tax revenues led the way with an 8.1 percent rise. Some states return a portion of the loot with tax cuts, but most find new ways to spend.

▼ Fed Creep. First Lady and would-be Sen. Hillary Rodham Clinton calls for uniform ratings system for TV, movies, and music. Such a "simple" rating system would help parents, she explains. But how to rate criminally silly ideas floated by politicians?



▼ Money for Nothing. The Justice Department's antitrust unit investigates MTV Networks, known threat to competition and economic well-being. In another case of the DOJ's picking sides, the feds are looking into complaints by record labels about MTV's demands for exclusive rights to videos.

▼ Revolver Charge. Washington, D.C., pumps money into the criminal economy with a loopy gun-buyback program. Many of the nearly 3,000 weapons the city buys for $100 each are old and worth around $30 on the street. Analysis by Bureau of Alcohol, Tobacco, and Firearms fails to find any murder weapons in the city's haul.

▼ Bad Seeds. Lawsuit politics comes to the grocery store. Green activists launch a class action suit against Monsanto, the largest producer of genetically modified seeds. They claim the firm misled farmers by saying the seeds are safe and would be accepted by the public. The leading cause of consumer fears about the foods? The same green activists.

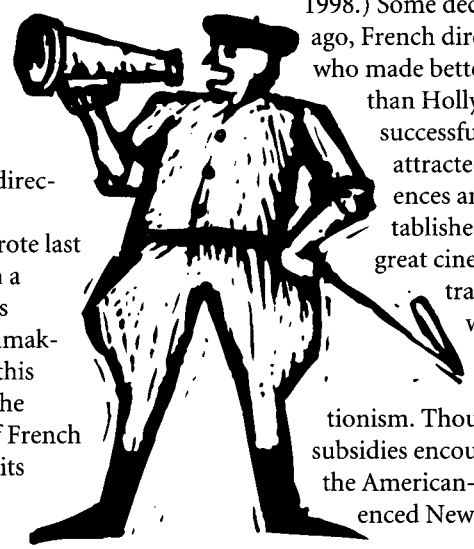
▼ Which Doctors. Bad psychologists may see little punishment for their misbehavior, as oversight boards nationwide revoke only a handful of licenses. Of the 670 psychologists disciplined nationally for sexual misconduct since 1971, 131 were allowed to continue practicing.

LIABILITIES

directors want protection from bad reviews.

According to a December account in *The New York Times*, France's directors have concluded that their industry is in crisis. In 1998, French movies attracted only 27 percent of the country's moviegoers, while U.S. films attracted 63 percent. Worse, nearly half the audience for French movies showed up for only three movies. Nearly all the remaining 145 French films produced last year were "*navets*," or bombs (the word literally means "turnips").

That trend continued throughout 1999. "Since the fall, all French films have flopped," director Patrice Leconte wrote last October in a letter to his fellow filmmakers. "I see this auguring the collapse of French cinema in its entirety."



And who's to blame? "French critics are playing the role of gravediggers." Leconte characterized many reviews as "premeditated assassinations" written as if "to kill off all commercial French cinema designed for a mass audience."

French critics shot back in kind. During a roundtable on the matter, Olivier Seguret, critic for the left-wing newspaper *Libération*, said, "It is perhaps a truth that is unpleasant to hear, but isn't the average American film better than the average French film?" Other critics agreed.

In November, the filmmakers released a statement accusing French criticism of suffering a "crisis of intelligence and competence." The directors asked that "no negative review of a film be published before the weekend that follows its theater release."

The entire farce illustrates the rising costs of cultural protectionism. As economist Tyler Cowen put it in these pages, "Protection actually decreases an industry's chance of competing successfully," because "protected artifacts often lose their artistic and competitive vitality." (See "French Kiss-Off," July 1998.) Some decades ago, French directors who made better films than Hollywood successfully attracted audiences and established a great cinematic tradition without protectionism. Though subsidies encouraged the American-influenced New Wave ▶

QUOTES

"If you had to describe the century's geopolitics in one sentence, it could be a short one: Freedom won. **Free minds and free markets** prevailed over fascism and communism."
—Walter Isaacson, "Person of the Century: Who Mattered and Why," in the December 31 *Time*

"A more suitable choice [than Hitler for Person of the Century] would be... Franklin Roosevelt....He rallied the power of free people and free enterprise to defeat fascism.... Henceforth, **the national government** (in the U.S. and most everywhere else) **took on the duty of managing the economy.**"
—Isaacson, later in the same article (*Time* declared Albert Einstein its Person of the Century.)

"It's a little bittersweet to see it end this way....**But I don't think we're out of the woods until May or June**. Plenty of computer problems can turn up between now and then. "
—Dennis Olson, a 41-year-old electrical engineer and computer consultant, reflecting on the $20,000 he spent on food, water, medical supplies, and a generator in preparation for Y2K chaos, in the January 2 *Milwaukee Journal-Sentinel*

BRICKBATS

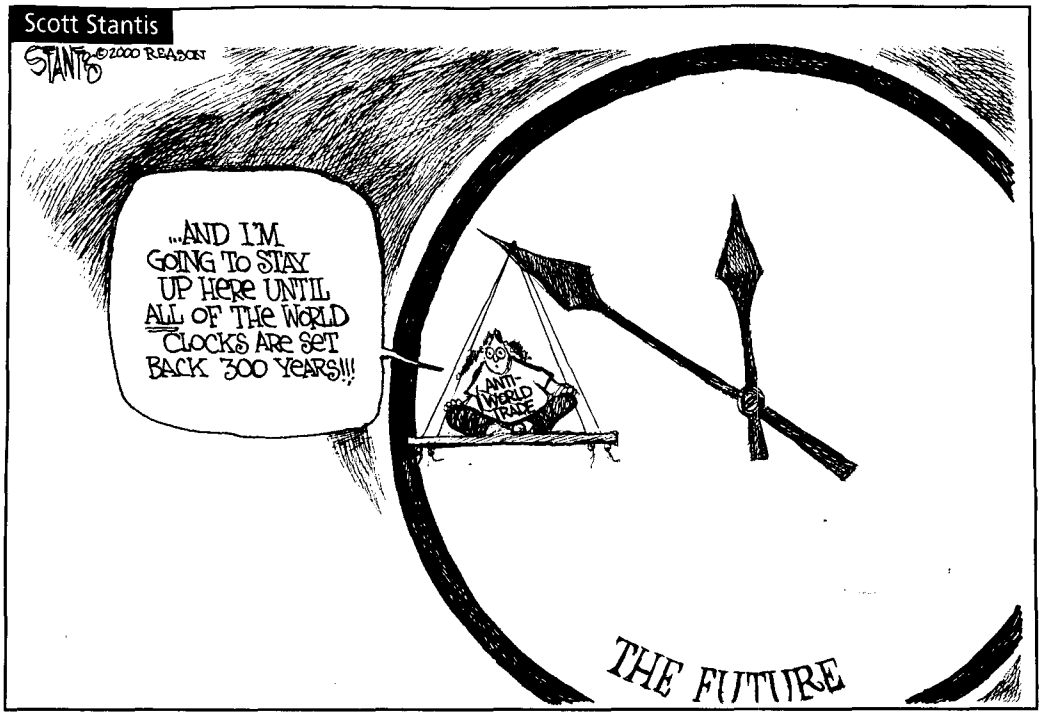
◆ The Physicians Committee for Responsible Medicine has filed a suit against the government claiming the federal school breakfast program is racially biased. What's the problem? It requires schools to serve milk, and the physicians argue that this discriminates against blacks, many of whom are lactose intolerant.

◆ Tired of the Pokemon craze? You might want to move to Quebec. The Pokemon trading cards sold there are in English only, and that violates the province's compulsory bilingualism. The manufacturer will have to come up with some French cards too, or it won't be able to sell any cards there.

◆ The ever-vigilant New York state Sen. Guy Vellela has discovered that pro wrestling is violent, traffics in ethnic stereotypes, and features scantily clad women. Worried about what might happen to children who watch too much of the stuff, he says he might introduce a bill banning kids from attending live wrestling events.

◆ Students at Florida's Deltonna Middle School now have two sets of schoolbooks, one for school and one for home. Deltonna, you see, is one of a growing number of schools that have banned backpacks. Officials say the rule was prompted by concerns that students might use the packs to carry guns or other contraband.

Scott Stantis


STANTIS ©2000 REASON
...AND I'M GOING TO STAY UP HERE UNTIL ALL OF THE WORLD CLOCKS ARE SET BACK 300 YEARS!!!
ANTI WORLD TRADE
THE FUTURE

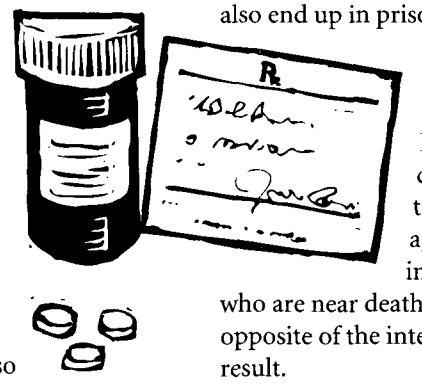
of the late 1950s and early 1960s, the intervening decades have shown an ever-dwindling return. The finger-pointing in Paris is the most recent nadir. "Film culture, like all culture, is dynamic," Cowen wrote. "It isn't protection that it needs; it is stimulation."

Death Penalty

By Jacob Sullum

Tight regulations have long discouraged doctors from prescribing narcotics to control severe pain, even though they're often the only effective measure. (See "No Relief in Sight," January 1997.) The result has been needless suffering. In October, by a vote of 271 to 156, the House of Representatives tried to address this problem by passing the Pain Relief Promotion Act of 1999, a bill that could instead make things worse.

The legislation would amend the Controlled Substances Act to say that "alleviating pain or discomfort in the usual course of professional practice" is a legitimate reason to prescribe a controlled substance, even if the drug "may increase the risk of death." But in response to an Oregon law that authorizes physician-assisted suicide, the bill would also ban the use of controlled substances "for the purpose of causing death."



As David Orentlicher, a physician and professor of law at Indiana University, observed in his testimony against the act, "the line between acceptable palliative care and unacceptable assisted suicide rests solely on the physician's intent. When intent is the critical issue, physicians must—and will—worry that law enforcement officers will see a criminal intent even when none existed."

Since a physician accused of having the wrong intent could not only lose his federal prescription license but also end up in prison, the bill may well make doctors less inclined to treat pain aggressively in patients who are near death—the very opposite of the intended result.

Old Elites

By James V. DeLong

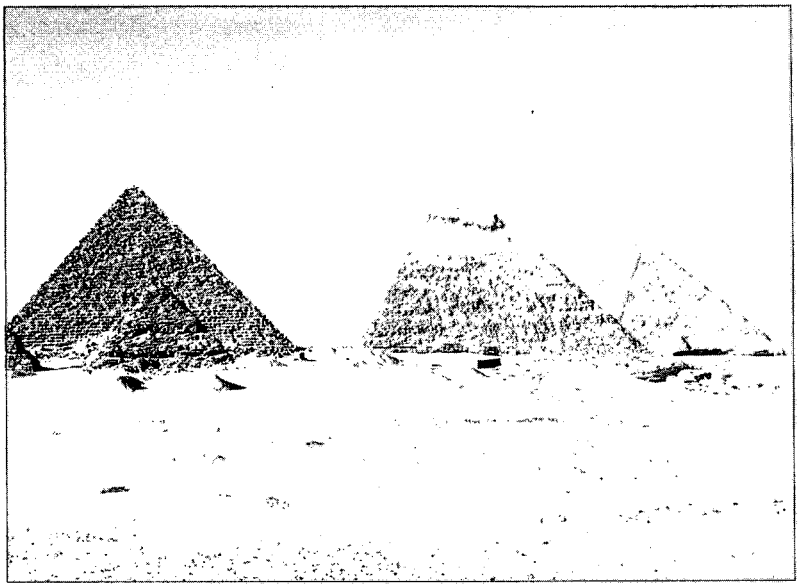
Archeological finds, we're constantly advised, must be left to experts. For example, under the American Antiquities Act of 1906, permits for "the excavation of archeological sites, and the gathering of objects of antiquity" on government land are to be granted only to "reputable museums, universities, colleges, or other recognized scientific or educational institutions, with a

ARTIFACT

Pyramid Schemes

On New Year's Eve most people were worried about their ATMs; others, however, were focused on the Great Pyramid. According to certain British millennialists, former President George Bush would be conducting a Black Mass inside the great Giza structure, summoning evil forces at midnight on behalf of an "Illuminati elite" of human-reptile hybrids. Bush obviously has a more colorful image overseas than he does here.

Egypt halted plans to top the pyramid with a two-story gold capstone intended to catch the first rays of the new year's sun. Why? Pyramid capping, charged critics who cited the back of the U.S. dollar bill, is a "Masonic" ritual. Since Freemasonry is just a front for international Zionism, claimed the critics, the year began capless in Giza.



A re-capped pyramid was prophesied by "sleeping prophet" Edgar Cayce, whose sonar-wielding followers claim to have located a "secret chamber" beneath the paws of the neighboring Sphinx. Meanwhile, archeologists are excavating the nearby tombs of Giza's pyramid builders; the contents may solve some lingering mysteries. There's evidence that construction involved an earthen ramp, for example, rather than interstellar anti-gravity devices.

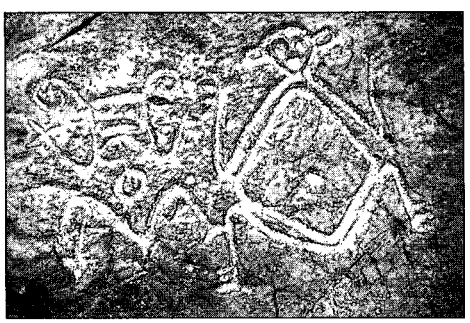
That may disappoint some, as, no doubt, did the cancellation of Bush's reptilian ceremony. But there's always next year, when the millennium *really* begins.

—Charles Paul Freund

view to increasing the knowledge of such objects, and that the gatherings shall be made for permanent preservation in public museums." Ancient artifacts, building sites, shipwrecks, tombs—all must be preserved from hoi polloi who would treat them with insufficient sensitivity, or from looters who might (shudder) sell things to private collectors. These days, people are arrested for picking up bullets on Civil War battlefields.

Do such protective efforts actually work? The Bureau of Land Management is responsible for sites and artifacts on federal lands. According to a recent report by the Department of the Interior's inspector general, the BLM has surveyed only about 5 percent of its 264-million-acre domain and has recorded only 221,000 significant sites out of more than 4 million. It has issued permits allowing accredited experts to remove more than 20 million objects to BLM-approved repositories, but it has no system for keeping track of the items. Nor does it maintain the inventories required by law.

In short, the system is almost perfectly perverse. It assumes that every site and artifact is "significant"—which is ridiculous—and then hogs them for the BLM and the experts. It removes any incentive for private citizens, who may actually have considerable skill and knowledge, to look for things, thus leaving many items unfound and unappreciated by anyone. And it fails in its alleged purpose, which is to ensure an orderly structure for archeological activity.



Meanwhile, the storerooms of America's museums are stuffed with items that are duplicative of or inferior to the pieces on display. There they repose, gathering dust, unseen by anyone.

Perhaps a little democratization is in order, along with the recognition that not everything old needs to be treated with reverence, and that a museum should hold only the exemplary items it needs. Why shouldn't there be a brisk trade in historical artifacts, even those found on that national commons better known as federal lands?

Shot Down

By Jacob Sullum

After the states managed to raise taxes and restrict advertising by suing Philip Morris and other cigarette makers, critics observed that such litigation is legislation in disguise. As such, they said, it undermines the separation of powers, short-circuits public debate, mocks the democratic process, and evades constitutional limits.

The Clinton administration has a carefully considered response to those objections: So what? In December, White House officials revealed plans for a lawsuit ▶

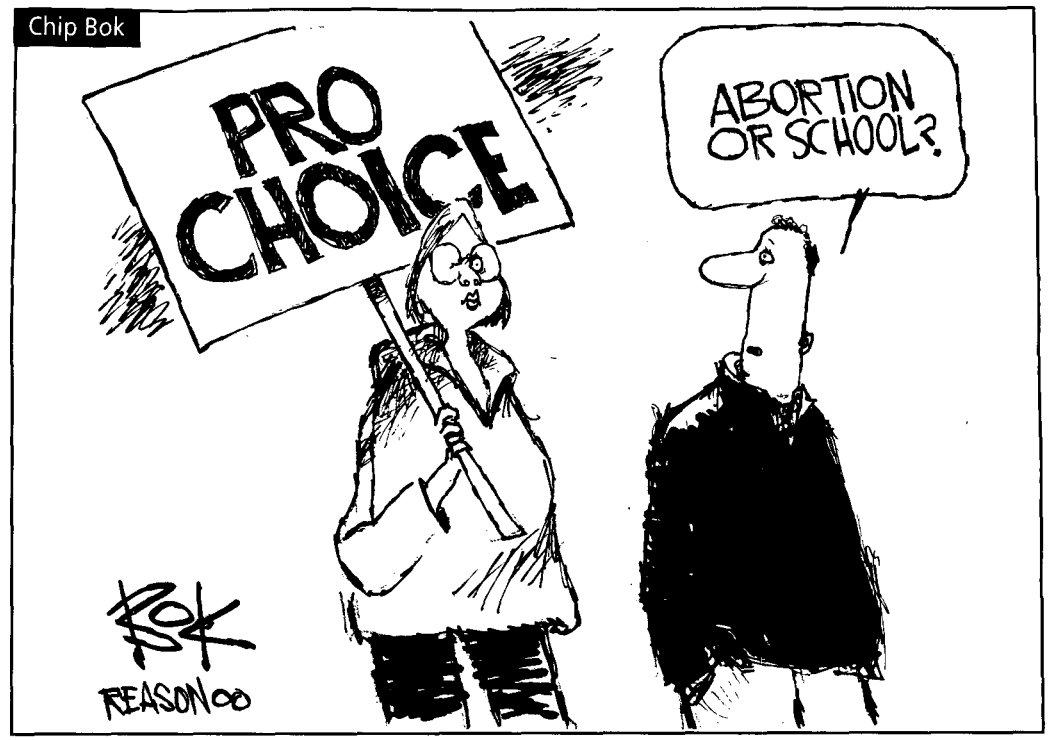
BRICKBATS

◆ A court in Dona Ana County, New Mexico, has ruled that people can't be cut from juries just because they don't speak English. So are interpreters allowed in the deliberation room now? And if interpreters are allowed, does each non-English speaker get one?

◆ Ever since Judge Thomas Penfield Jackson declared Microsoft a monopoly and a bully, dozens of lawsuits have been filed against the company. But in their haste to shake down Microsoft, some attorneys apparently failed to learn a few key facts. One suit filed in California identified the firm as being in the generic drug business. Another suit claims that the company is principally located "within the state of Texas." That same suit says it will represent people who bought computers from the "MacIntosh Computer Company." It also lists as possible plaintiffs those who have purchased Windows 2000—which hadn't been released when the suit was filed.

◆ Some nations have gun control. Colombia has cement control. Farmers there often mix coca leaves with cement and other ingredients to get what is known as cocaine base. That base is later sold to drug traffickers who process it to get pure cocaine. Not only does Colombia now restrict the amount of cement anyone can buy, it also has given the police and army special powers to seize cement from those suspected of being in the drug trade.

Chip Bok



that would blame gun manufacturers for shootings in public housing projects. Officials did not pretend they were interested in justice.

Domestic policy adviser Bruce Reed explained that the suit was aimed not at winning compensation but at extracting concessions from the gun industry, including advertising limits, mandatory safety locks, and new restrictions on sales. "If the Republican-controlled Congress wants to block sensible gun control," White House spokesman Joe Lockhart told *The Washington Times*, "we're going to find a way to [enact] it."

Maybe not. The announcement of the federal suit came just as judges were dismissing similar cases brought by local governments.

Last October, an Ohio judge ruled that Cincinnati, one of about 30 cities and counties pursuing gun lawsuits, had failed to state a cause of action. He rebuked the city for asking the court to "substitute its judgment for that of the legislature."

The day after news of the federal suit broke, a Connecticut judge rejected Bridgeport's claim that gun makers are guilty of creating a "public nuisance" because some of their products are used in crimes and suicides. "The plaintiffs have no statutory or common law basis to recoup their expenditures," he found. The following week, a Florida judge dismissed Miami-Dade County's suit on similar grounds.

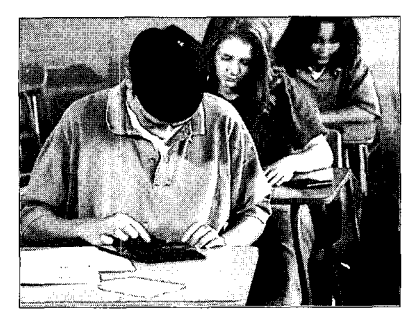
Miami Mayor Alex Penelas was undeterred. "Any time you are dealing with cutting-edge legislation," he told the Associated Press, "this is bound to happen." Did he mean "litigation"? You decide.

Bak to Skool

By Brian J. Taylor

High school is not providing the education necessary for success either in college or in the workplace, according to a recent report by the Washington-based Education Trust. The report decried a "significant gap" between the requirements for high school graduation and entrance requirements for college, as well as a lack of focus on practical skills, such as "document reading," that would help ease the transition into the work force. In 1997 one-third of college students needed to take remedial courses in reading, math, or writing to make up for their deficient high school education. (See "Why Johnny Can't Fail," July.)

Such problems are compounded by the incompetent—and sometimes dishonest—behavior of educa-



tors. In December, for instance, a 17-month probe by Edward Stancik, an investigator for the New York City Public School District, found that teachers and administrators at 32 separate schools had helped students cheat on standardized tests by providing answers and, in some instances, by filling out the tests themselves. Administrators in the beleaguered district are under pressure to boost test scores, and 52 employees have been suspended pending a final investigation and evaluation by the schools chancellor.

Beyond ethical lapses, sometimes teachers just don't understand their own subjects. Ari Armstrong, a researcher with the Golden, Colorado–based Independence Institute, has faulted Colorado's school board for approving ambiguous and muddleheaded math materials and tests.

As an example, Armstrong cites a sixth-grade worksheet on probability that declares, "An outcome which can happen has a probability of one." Armstrong notes that the statement is nonsensical, since it implies that anything that *can* happen *will* happen. Fully half the problems on the worksheet are impossible to solve as a result of missing conditions, leading Armstrong to declare: "The probability that a student will end up utterly confounded and frustrated by the exercise approaches 100%."

DATA

More Than Anybody Wanted

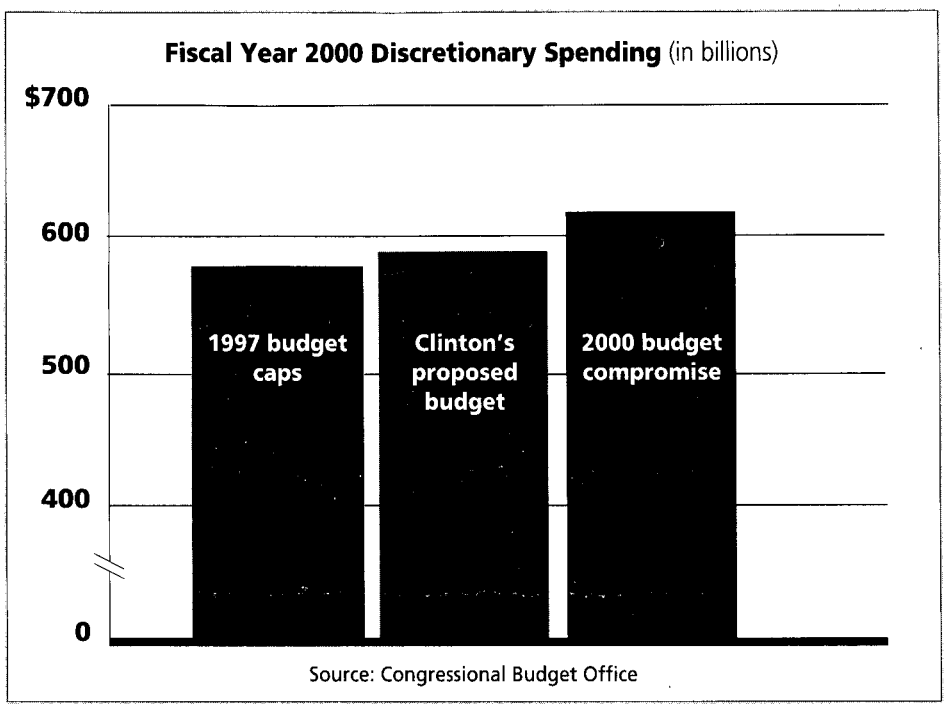
By Michael W. Lynch

The standard definition of a compromise is that each side gives up something to facilitate a deal. In Washington, however, compromise means that both sides get more than they originally asked for; only taxpayers are asked to give something up.

Consider last fall's budget compromise. Way back in 1997, the president and Congress agreed that in fiscal year 2000, the federal government would spend no more than $580 billion from its discretionary accounts. No matter: President Clinton proposed spending $592 billion. After much wrangling, Congress managed to get him to agree to spend a mere $617 billion.

"This is how agreements are made in Washington," says Scott Hodge, a budget analyst at Citizens for a Sound Economy. "The president requests a level of spending, Congress approves a slightly lower amount, and after they negotiate they compromise at a higher level than even the president asked for."

This dynamic was on display in the agriculture research bill, which funds such worthy items as blueberry research and aquaculture studies. Clinton requested $469 million, the Senate approved $474 million, and they compromised at $486 million. In the case of education, congressional leadership actually bragged that they spent $1 billion more than the president requested.

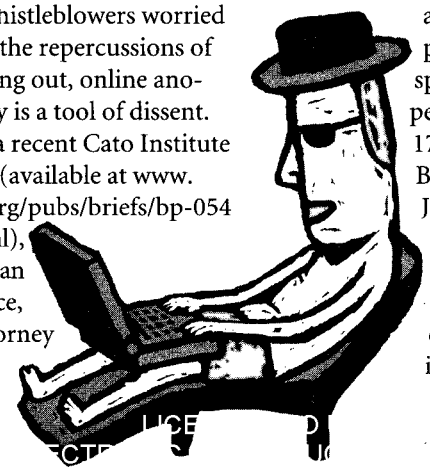


Name Dropping

By Jacob Sullum

To police worried about hackers, con men, and other cyberspace menaces, the ability to conceal one's identity on the Internet is a tool of crime. But to critics and whistleblowers worried about the repercussions of speaking out, online anonymity is a tool of dissent.

In a recent Cato Institute paper (available at www.cato.org/pubs/briefs/bp-054es.html), Jonathan Wallace, an attorney and software executive, notes that anonymous and pseudonymous speech has a rich pedigree. The 17th-century British writers John Trenchard and Thomas Gordon, whose essays on liberty had a strong influence on the Founders, called themselves "Cato" (the think tank's namesake). Thomas Paine's *Common Sense* was initially attributed simply to "an Englishman." The Federalists and Anti-Federalists debated each other under names such as "Publius" and "Candidus."



The U.S. Supreme Court has consistently recognized that the First Amendment protects the right to speak ▶

BRICKBATS

◆ Irish censors have banned *In Dublin*, a mainstream magazine used by tourists and locals to find out what's happening in the city. The problem isn't the editorial content. It's the ads. The magazine has several small advertisements listing phone numbers for massage parlors and sex chat lines. The censors refuse to say exactly which ads they found offensive, which has left the publisher confused, since most of the ads also appear in other magazines that haven't been banned.

◆ Brazilian bikinis may be the tiniest in the world; many are just small scraps that could fit into an envelope. But there's still enough material there to depict the Brazilian flag. A Senate panel, aggrieved that the national symbol might appear near a woman's genitalia, has passed a bill outlawing the use of the flag on any item of underwear or clothing, especially the notorious "dental floss" swimsuits.

◆ Mayor Cecil Bjork of River Falls, Wisconsin, faces charges of disorderly conduct for allegedly grabbing reporter Sue Odegard in a bookstore and shaking her several times. Bjork was reportedly upset by an editorial cartoon.

◆ At a chess tournament on the Spanish island of Menorca, the players had to provide a urine sample for drug testing. Presumably, any player caught taking steroids was immediately disqualified.

—Charles Oliver

Henry Payne

THE SURGEON GENERAL REPORTS THAT 1 IN 5 AMERICANS IS CRAZY. CAN YOU GUESS WHICH ONE?
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without revealing one's identity, most recently in a 1995 decision overturning an Ohio ban on anonymous campaign leaflets. In 1997, a federal judge cited that case in overturning a Georgia law that made it a misdemeanor for senders of Internet messages to falsely identify themselves.

Yet opponents of Internet anonymity continue to argue that users should be compelled to give their names, either through a service provider's register or through information incorporated into data packets. They suggest that Web pages and e-mail messages, the contemporary equivalent of colonial pamphlets, do not deserve the same protection as that venerable form. Fortunately, the Supreme Court rejected that position when it overturned sections of the Communications Decency Act in 1997.

Aside from the constitutional problem, Wallace notes, attempts to ban anonymous Internet speech face formidable technical obstacles. "Anonymity and pseudonymity are built into the architecture of the Net," he writes. "Legislators should be particularly wary of laws requiring sweeping changes to communications technology in order to serve speech-restricting goals." ◆

MAR 1970 MAR 1970 MAR 1970

30 YEARS AGO IN REASON

☛ "A few nights ago, at a local outdoor rock concert, the strangest haze of smoke hung over the crowd. For anyone downwind who didn't happen to like the smell of pot, I guess that cloud would be pollution. To the freaks, it was pure ecstasy."

—Lanny Friedlander, "Ripping Off Mother Earth: The Theft of the Environment"

☛ "As Ralph Nader and other 'liberals' are painfully discovering, there seems to be a regular pattern in the history of [regulatory] agencies—they invariably come to represent and serve the special interests of the established companies in the industry supposedly being regulated."

—Robert Poole Jr., "Infinite Sink No More"

☛ "A political...philosopher ought to be able to tell a ruler how to accomplish any given purpose. Rulers, as it happens, have only one important characteristic in common: they want to keep the job. As it also happens, the most likely client for a political philosopher on the make is a ruler."

—Michael Etchison, "The Snow Turns Black in Moscow Too"

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Light Meals

In which our man in Washington samples dioxin, ice cream, sexual harassment, and butt-kissing analysts.

By Michael W. Lynch

Date: Thurs, December 16, 1999
1:45:15 PM
From: mlynch@reasondc.org
Subj: Ben & Jerry's Breakfast

The Competitive Enterprise Institute was serving Ben & Jerry's ice cream this morning. The occasion was a press conference announcing that CEI had filed a false advertising complaint against the makers of Cherry Garcia.

Ben & Jerry's is quite concerned about the environment and quite supportive of Greenpeace, on whose board company cofounder Ben Cohen sits. The company combines these affections by producing "dioxin free" containers (ECO-Pints) and citing the Greenpeace party line on why this is a good thing in such adver-informational pamphlets as "Our Thoughts on Dioxin." One such thought is, "The only safe level of dioxin exposure is no exposure at all."

The problem: Ben & Jerry's packaging may be OK, but the company's *ice cream*, according to certified lab results, contains a heap of dioxin—nearly 200 times the amount the Environmental Protection Agency considers safe.

Such hypocrisy is more than the folks at CEI could take. According to CEI General Counsel Sam Kazman, the institute believes the federal government serves two legitimate purposes: to protect against force, which is why the military is OK, and to protect against fraud, which is why some folks at CEI consider the Federal Trade Commission legitimate. Today CEI has called on the FTC to investigate Ben & Jerry's for false advertising. Hence, I got ice cream for breakfast.

CEI is known for such creativity. In 1995, after the FDA announced it could regulate cigarettes as nicotine delivery devices, the folks at CEI embraced the model and called on the FDA to regulate colas and coffee as caffeine delivery devices. Purveyors of such products, after all, market them heavily to children even as they manipulate the levels of caffeine. And everyone knows that caffeine has pharmacological effects. This stunt cost CEI the support of Coca-Cola, according to Sam Kazman, and they weren't even serious.

This time, however, they are. To prove it, they presented retired government biologist Michael Gough, who has been studying dioxin since 1979 and served on the EPA's scientific advisory board on dioxin.

At 10:05 a.m., Sam Kazman stepped behind the podium and, with five or six empty containers of Ben & Jerry's ice cream to his right, articulated the complaint. By claiming that its packaging is dioxin free, he said, Ben & Jerry's is committing two well-established legal violations: deception by omission of material fact—in this case, that the ice cream contains dioxin—and deception by implication—in this case, the implication that the ice cream doesn't contain dioxin.

Kazman used a hypothetical kosher restaurant to illustrate the violations. Suppose a restaurant advertised it was kosher by claiming to maintain separate utensils for the handling of dairy and meat products, but didn't tell customers that the beef it served wasn't kosher. This would be false advertising.

Kazman doesn't claim a health hazard, nor did the scientist Gough. Indeed, a point of the exercise seems to be to get Ben & Jerry's to admit that ingesting a little dioxin, even if nearly 200 times what our government deems safe, has no health consequences. Said Kazman, "If Ben & Jerry's believed what they were saying, it would not be selling this product."

The harm the company is inflicting on its customers, like that of the hypothetical kosher restaurant, is spiritual, not physical. Greenies simply have the right to know that they are eating dioxin when a spoonful of New York Superfudge Chunk passes over their lips and down their gullets.

Hot on the breaking story, I walked directly to my office after eating a Dixie cup of Chocolate Chip Cookie Dough and called FTC Commissioner Orson Swindle's office for comment. Swindle, who bunked with Sen. John McCain (R-Ariz.) in a North Vietnam prison camp, seems like a fellow who likes a bit of ice cream—a taste an aide I got on the phone would neither confirm nor deny. He chuckled when I described the complaint, this being the first he heard of it, and asked me to fax it over. I'm still waiting for comment. I then called Burlington, Vermont, for comment from Lee Holden, the Ben & Jerry's public relations specialist whose name and number appeared on its ECO-Pint press release. He never returned my call.

Date: Thurs, December 16, 1999
4:36:35 PM
From: mlynch@reasondc.org
Subj: A Nonadversarial Approach to Sexual Harassment

"I do not call a woman a bitch. I do not call them a ho either," offered a young man yesterday at a Cato Institute forum on sexual harassment, proving the axiom that a microphone should be ripped from anybody who prefaces his remarks with, "I don't have a question, but a couple of comments." He was attempting to make

HENRY PAYNE

the point that he thinks sexual harassment is a generational thing, as if our grandfathers popularized the couplet "bitches and hos." In so doing, he managed to plug his book-in-progress, *The Future of Civilization*, mentioning that it would be bound in two volumes.

Joan Kennedy Taylor, author of *What to Do When You Don't Want to Call the Cops: A Non-Adversarial Approach to Sexual Harassment* (NYU Press), was the featured speaker, with University of Virginia law professor J.H. Verkerke commenting on the book. The nut of the book, Taylor told me over the tail end of Cato's standard lunch of sandwiches, potato chips, and cookies, is that as women complete their infiltration of even the most sacrosanct of male workplaces, sexual harassment is going to become a non-issue.

There will be bumps along the way, of course, primarily because men often don't know how to treat a woman in such environments. Women must recognize that men develop cultures that allow them to cooperate but that also have anti-women components: the use of foul language, the embrace of sexual jokes, and the tolerance of pornography. "Women," says Taylor, "have to recognize that this predated them and is not an attack on them." Men in these situations simply don't know how to treat women as colleagues. They either treat a female co-worker like they treat women outside of work, giving deference with healthy dabs of honey, or treat her like one of the guys. Men get in trouble either way. What is needed, in most cases, therefore, is not a lawsuit but better communication.

Which brings us to Taylor's response to Cato analyst Darcey Olsen, who, as a libertarian looker, often finds herself as a minority inside a minority. Olsen asked what advice Taylor had for men in a majority position, presumably all those beasts at Cato. "The first thing they should realize is that they have habits that women find offensive," Taylor said. No shit. Taylor then used the military as an example. "They used to drill [chanting] 'rape, kill, mutilate,' " she said. "Obviously women are going to change this."

One of the great things about these events is that they are open to the public, and sometimes members of the public attend. A woman describing herself as an activist at her daughter's high school said high schools are experiencing problems with girls being approached by lesbians. This is just the type of probing comment nobody in polite society wants to deal with. Taylor dodged by saying such harassment was covered by Title IX, and that she hadn't studied it.

The professor spoke up, saying that the Supreme Court has established a different standard for school cases. He seemed a bit distressed that schools actually have to be notified of the alleged harassment and fail to take action in order to be held liable. That sounds about right to me. But then "boys will be boys," was still an excuse when I was in school.

No one can resist the temptation to kiss the butts of the candidates.

Date: Fri, January 7, 2000 2:40:37 PM
From: mlynch@reasondc.org
Subj: How They'd Govern

Newsweek's Eleanor Clift and *The Washington Post*'s E.J. Dionne Jr. were talking in the doorway. Former congressman Dan Rostenkowski sat at the dais. "Dave, good to see you," he greeted *The Weekly Standard*'s David Brooks in a deep, weathered voice that was audible to me in the fourth row.

It was Tuesday, and the American Enterprise Institute, in conjunction with the Brookings Institution and the Hoover Institution, was kicking off the first of four forums titled "How Would They Govern?" Bill Bradley was today's topic of discussion. Thursday it's John McCain's turn. Next week Al Gore and George W. Bush will be examined.

The purpose, in the words of Thomas Mann of Brookings, is "to make campaigns conducive to government rather than antithetical to it." It's a noble goal, and one suitable for these august institutions. But it's awfully hard to accomplish. Where does one find a disinterested analyst in this city? The elected officials they set up for the first two panels are either active supporters of the candidates—Rep. George Miller (D-Calif.) for Bradley and Sen. Chuck Hagel (R-Neb.) for McCain—or disgraced former politicians now lobbying their former colleagues, seeking redemption, or a combination of both.

Rostenkowski, recently released from prison, was the most believable of the bunch. Bob Packwood had a sexual harassment problem for which the Senate Ethics Committee recommended his expulsion in 1995, causing him to resign on principle. He's now a lobbyist. Then there's former Minnesota Sen. David Durenberger, a goofy fellow who had nothing interesting to say and kept referring to himself in the third person. I knew there had to be something shady in his past. Sure enough, according to *The Almanac of American Politics*, there was a laundry list of ethical problems, including an indictment for financial misdealing, that cut his already too-long political career short in 1994. From his comments, he now appears to be lobbying on long-term health care issues.

It's tough to get at the core of a person, even with an insider group of the still and formerly powerful. No one can resist the temptation to kiss the butts of the candidates. For some, such as McCain press secretary Dan Schnur, this is because they are paid to say only good things and are good at what they do. For others, it's because they are unabashed partisans. Hagel, who's on McCain's national steering board or some such thing, was spewing so much bullshit the room started to stink. The journalists were the most objective, and the most useful. But even they are hemmed in by considerations of future access and the fact that much of the good information is off the record.

In one of the forum's high points, co-moderator Brooks read a recent Bradley response to the question, Why are you running? "I think we are good people," read Brooks. "There's a goodness in every one of us, and we can see it in our neighbor, and if we can see it in our neighbor, then that allows us to have more connection, and if we have more connection, then we are less fearful and less lonely, and then with less loneliness we can begin to see the whole, and when you see the whole, you see our collective possibilities, so that's the

real reason I am running."

Brooks then asked Rostenkowski: 1) How would Boss Daley respond to a politician who speaks like this? 2) Does he resemble Jimmy Carter? 3) Can a politician who speaks like this pass legislation?

Rosty, who worked with Bradley to pass the 1986 Tax Reform Act, said he didn't know a Bill Bradley who talked like this. The Bradley he knew was incredibly detail-oriented, hard working, and in Rosty's office so much that he thought Bradley was part of his staff. Rosty said that he'd had problems with what he called "the wet head gang," members on the committee who were in the gym all the time and came to votes with wet heads from recent showers. Rosty, who still holds forth as if he's running his committee, asked Bradley to head to the gym to work on those folks. Bradley said he had made a commitment to himself that he wouldn't play basketball while in the Senate. "Bill, do you want a bill?" Rosty recalled saying. "Do you want a bill? Then get down to the gym." Bradley went down, and the wet heads came around.

Bradley's other great legislative accomplishment was reform of the federal water projects in California, a feat that Rep. Miller spoke of at length. Marcia Aronoff, who served as Bradley's chief of staff from 1978 to 1991, was, not surprisingly, bullish on Bradley. I don't recall her mentioning a single drawback to a Bradley presidency, which will almost surely land her in a key administration post. Rosty expressed concerns that Bradley wouldn't compromise enough. Durenberger seemed to think that Bradley hadn't needed to master a lot of intricate policy, such as health care while in the Senate, since "Durenberger" was there to do the heavy lifting.

Thursday it was on to McCain. The panel consisted of Packwood, Hagel, *Washington Post* reporter Helen Dewar, and Associated Press reporter Matt Kelly. The conclusion I left with is that McCain would be an excellent chief executive. He'd give reporters access, delegate just the right amount to staff, and make decisions based on his breadth of experience and sound principles.

When asked what kind of White House McCain would run (we were, after all, pondering governance), Bob Packwood let loose. "Duty, honor, country, McCain," he said are the words that pop into his mind when he thinks of McCain. "He will be in charge. Like Ronald Reagan, he understands that the function of the president is to inspire the country." Packwood, it turns out, is on McCain's tax committee and has sent him some papers. He later said he would expect McCain to disband the Federal Communications Commission, privatize parts of air traffic control, and further deregulate trucks and railroads.

McCain had made the front page of the nation's papers Thursday for sending a letter to the FCC asking it to act, but not telling it how to act, on a long delayed case involving Paxson Communication Corp., a campaign contributor whose corporate jets McCain sometimes uses. In his defense of McCain, Hagel hit on an excellent idea. "Why don't we just disband Congress," Hagel said, by way of illustrating the absurdity of anyone's questioning the motives of a senator who oversees an agency and sends it a letter.

McCain's communications director Dan Schnur showed why he's playing with the big kids. Addressing McCain's apparent hypocrisy, he pointed out that 90 percent of American businesses have issues before the commerce committee that McCain chairs. If he didn't take money from individuals associated with business, Schnur said, "He'd be limited to taking money from Chinese nationals, and we saw how that worked last cycle." That was good for a laugh. And the plane rides are no big deal, Schnur said, since Paxson makes its plane available to any member of Congress any time the company is not using it. (The duties of a regulated industry—Bill Gates, take note.)

At this point, Hagel said, "Commercial airlines don't fly in and out of New Hampshire and South Carolina and all these little places," and informed us that politicians have to pay first-class rates to use these jets.

Schnur was soon back on message, saying the problem with politics is the special interests and corporate money, and that we need to clean up the system to get rid of the cynicism. I still don't know why.

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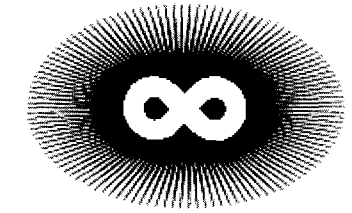

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We look forward to seeing you Presidents' Day Weekend.

■ ■ ■

Confirmed Speakers:

- **Jhane Barnes**, designer, "Mathematics, Computers, and the Art of Textile Design"
- **Gregory Benford**, UC-Irvine astrophysicist, "Thinking Long in the Millennium"
- **Daniel Botkin**, UC-Santa Barbara ecologist, president, Center for the Study of the Environment, author of *Discordant Harmonies*, "The Future of Nature: How to Have Both Civilization and Nature in the 21st Century"
- **Charles Paul Freund**, senior editor, *Reason*, "Dark Verge? The Uneasy Case of Vienna 1900"
- **Neil Gershenfeld**, leader, physics and media group, MIT Media Lab, author, *When Things Start to Think*, "Things that Think"

- **Nick Gillespie**, executive editor, *Reason*, "Popular Culture on the Verge"
- **Lisa Graham Keegan**, Arizona Superintendent of Public Instruction, "Innovations in Education"
- **Grant McCracken**, Harvard Business School, author, *Plenitude* and *Culture and Consumption*, "Verge of Verges: Sir Francis Bacon at the Gates of Gibraltar"
- **Christena Nippert-Eng**, sociologist, Illinois Institute of Technology, author, *Home and Work*, "Home and Work: Drawing the Boundaries"
- **Daniel Pink**, *Fast Company* contributor, "Free Agent Nation"
- **Steven Postrel**, UC-Irvine Graduate School of Management, "The Geek and the Dilettante: Sharing Knowledge Across Specialities"
- **Virginia Postrel**, editor, *Reason*, author, *The Future and Its Enemies*, "On the Verge: Exploring the Frontiers of Creative Encounter"
- **Adam Clayton Powell III**, vice president, technology and programs, The Freedom Forum, "Culture and Collision"
- **Richard Rodriguez**, author, *Days of Obligation* and *Hunger of Memory*, "Some Thoughts on the Burrito and the Browning of America"
- **Lynn Scarlett**, executive director, Reason Public Policy Institute, "Can Industry Save the Planet? The Rise of Industrial Ecology"
- **Michael Schrage**, columnist, *Fortune*, senior associate, MIT Media Lab, author, *No More Teams!* and *Serious Play*, "Serious Play"
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By Alan Charles Kors

Thought Reform 101

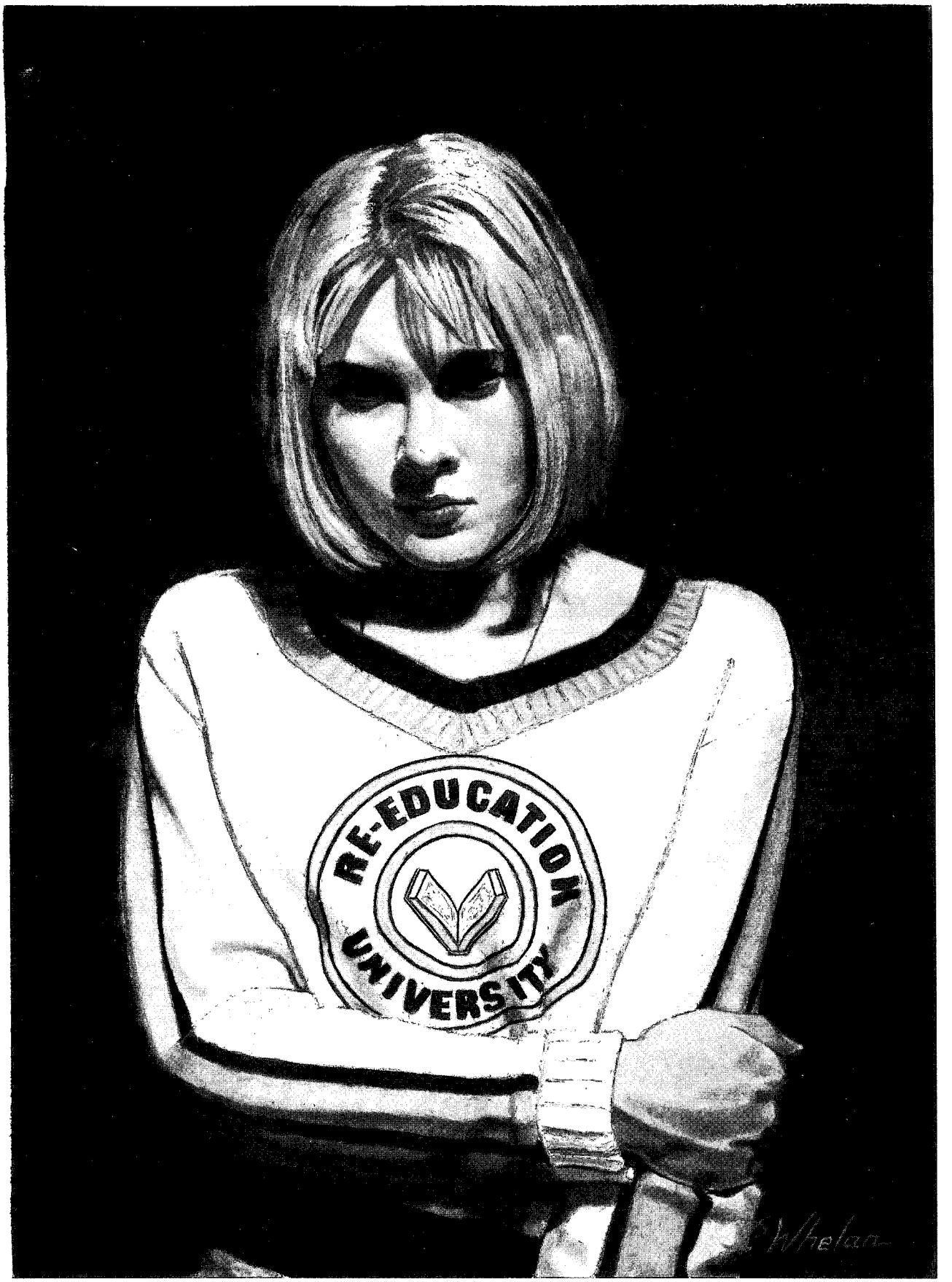
The Orwellian implications of today's college orientation

At Wake Forest University last fall, one of the few events designated as "mandatory" for freshman orientation was attendance at *Blue Eyed*, a filmed racism awareness workshop in which whites are abused, ridiculed, made to fail, and taught helpless passivity so that they can identify with "a person of color for a day." In Swarthmore College's dormitories, in the fall of 1998, first-year students were asked to line up by skin color, from lightest to darkest, and to step forward and talk about how they felt concerning their place in that line. Indeed, at almost all of our campuses, some form of moral and political re-education has been built into freshman orientation and residential programming. These exercises have become so commonplace that most students do not even think of the issues of privacy, rights, and dignity involved.

A central goal of these programs is to uproot "internalized oppression," a crucial concept in the diversity education planning documents of most universities. Like the Leninists' notion of "false consciousness," from which it ultimately is derived, it identifies as a major barrier to progressive change the fact that the victims of oppression have internalized the very values and ways of thinking by which society oppresses them. What could workers possibly know, compared to intellectuals, about what workers truly should want? What could students possibly know, compared to those creating programs for offices of student life and residence, about what students truly should feel? Any desire for assimilation or for individualism reflects the imprint of white America's strategy for racial hegemony.

In 1991 and 1992 both *The New York Times* and *The Wall Street Journal* published surveys of freshman orientations. The *Times* observed that "orientation has evolved into an intense ...initiation" that involves "delicate subjects like...date rape [and] race relations, and how freshmen, some from small towns and tiny high schools, are supposed to deal with them." In recent years, public ridicule of "political

PATRICK WHELAN


RE-EDUCATION
UNIVERSITY

correctness" has made academic administrators more circumspect about speaking their true minds, so one should listen carefully to the claims made for these programs before colleges began to spin their politically correct agendas.

Tony Tillman, in charge of a mandatory "Social Issues" orientation at Dartmouth, explained in the *Journal* that students needed to address "the various forms of 'isms': sexism, racism, classism," all of which were interrelated. Oberlin "educated" its freshmen about "differences in race, ethnicity, sexuality, gender, and culture," with separate orientations for blacks, Hispanics, gays and lesbians, and Americans of Asian descent. Columbia University sought to give its incoming students the chance "to re-evaluate [and] learn things," so that they could rid themselves of "their own social and personal beliefs that foster inequality." Katherine Balmer, assistant dean for freshmen at Columbia, explained to the *Times* that "you can't bring all these people together...without some sort of training."

Thought reform is making its way inexorably to a college near you. If we let it occur at our universities and accept it passively in our own domains, then a people who defeated totalitarians abroad will surrender their dignity, privacy, and conscience to the totalitarians within.

Greg Ricks, multicultural educator at Stanford (after similar stints at Dartmouth and Harvard), was frank about his agenda: "White students need help to understand what it means to be white in a multicultural community....For the white heterosexual male who feels disconnected and marginalized by multiculturalism, we've got to do a lot of work here." Planning for New Student Week at Northwestern University, a member of the Cultural Diversity Project Committee explained to the *Weekly Northwestern Review* in 1989 that the committee's goal was "changing the world, or at least the way [undergraduates] perceive it." In 1993, Ana Maria Garcia, assistant dean of Haverford College, proudly told the *Philadelphia Inquirer* of official freshman dormitory programs there, which divided students into two groups: happy, unselfish Alphas and grim, acquisitive Betas. For Garcia, the exercise was wonderfully successful: "Students in both groups said the game made them feel excluded, confused, awkward, and foolish," which, for Garcia, accomplished the purpose of Haverford's program: "to raise student awareness of racial and ethnic diversity."

In the early 1990s, Bryn Mawr College shared its mandatory "Building Pluralism" program with any school that requested it. Bryn Mawr probed the most private experiences of every first-year student: difference and discomfort; racial, ethnic, and class experiences; sexual orientation; religious beliefs. By the end of this "orientation," students were devising "individual and collective action plans" for "breaking free" of "the cycle of oppression" and for achieving "new meaning" as "change agents." Although the public relations savvy of universities has changed since the early 1990s, these programs proliferate apace.

The darkest nightmare of the literature on power is George Orwell's *1984*, where there is not even an interior space of privacy and self. Winston Smith faces the ultimate and consistent logic of the argument that everything is political, and he can only dream of "a time when there were still privacy, love, and friendship, and when members of a family stood by one another without needing to know the reason."

Orwell did not know that as he wrote, Mao's China was subjecting university students to "thought reform," known also as "re-education," that was not complete until children had denounced the lives and political morals of their parents and emerged as "progressive" in a manner satisfactory to their trainers. In the diversity education film *Skin Deep*, a favorite in academic "sensitivity training," a white student in his third day of a "facilitated" retreat on race, with his name on the screen and his college and hometown identified, confesses his family's inertial Southern racism and, catching his breath, says to the group (and to the thousands of students who will see this film on their own campuses), "It's a tough choice, choosing what's right and choosing your family."

Political correctness is not the end of human liberty, because political correctness does not have power commensurate with its aspirations. It is essential, however, to understand those totalizing ambitions for what they are. O'Brien's re-education of Winston in *1984* went to the heart of such invasiveness. "We are not content with negative obedience.... When finally you surrender to us, it must be of your own free will." The Party wanted not to destroy the heretic but to "capture his inner mind." Where others were content to command "Thou shalt not" or "Thou shalt," O'Brien explains, "Our command is '*Thou art.*'" To reach that end requires "learning... understanding [and] acceptance," and the realization that one has no control even over one's inner soul. In *Blue Eyed*, the facilitator, Jane Elliott, says of those under her authority for the day, "A new reality is going to be created for these people." She informs everyone of the rules of the event: "You have no power, absolutely no power." By the end, broken and in tears, they see their own racist evil, and they love Big Sister.

The people devoted to remolding the inner lives of undergraduates are mostly kind and often charming individuals. At the Fourth Annual National Conference on People of Color in Predominantly White Institutions, held at and sponsored by the University of Nebraska last October, faculty and middle-level

administrators of student life from around the country complained and joked about their low budgets, inadequate influence, and herculean tasks.

Their papers and interviews reveal an ideologically and humanly diverse crowd, but they share certain assumptions and beliefs, most of which are reasonable subjects for debate, but none of which should provide campuses with freshman agendas: America is an unjust society. Drop-out rates for students of color reflect a hostile environment and a lack of institutional understanding of identity and culture. What happens in the classroom is inadequate preparation for thinking correctly about justice and oppression.

They also share views that place us directly on the path of thought reform: White students desperately need formal "training" in racial and cultural awareness. The moral goal of such training should override white notions of privacy and individualism. The university must become a therapeutic and political agent of progressive change.

According to one diversity text, each racial group differs in perceiving reality. Whites wish to "control" nature, for example; Hispanics, to live in "harmony" with it; blacks, to "overcome" it; and Asians, to "be adjusted to" and "accept" it.

Handouts at the Nebraska conclave illustrated this agenda. Irma Amirall-Padamsee, the associate dean of student relations and the director of multicultural affairs at Syracuse University, distributed the Office of Multicultural Affairs' brochure. Its "philosophy" presupposes that students live "in a world impacted by various oppression issues," including "racism." "OMA's role," it announced, "is to provide the...leadership needed to encourage our students...to grow into individuals willing to take a proactive stance against oppression in all its shapes."

Molly Tovar, who has done this sort of work both at the University of Oklahoma and at Oklahoma State University, passed out a 22-page guide she co-authored, "How to Build and Implement a Comprehensive Diversity Plan." The guide explains the three "kinds of attitudes" that agents of cultural change will face: "The Believers," who are "cooperative; excited; participative; contributive"; "The Fence Straddlers," who are "suspicious; observers; cautious; potentially open-minded"; and "The Skeptics," who are "critical; passive aggressive; isolated; traditional."

Ronnie Wooten, of Northern Illinois University, distributed a handout, "Inclusive Classroom Matters." It adapts a variety of common academic sources on multiculturalism, including a set of "guidelines" on how to "facilitate learning about those who are different from you." The students in this "inclusive classroom" would have to abandon what might be their sincere inner beliefs, replacing them with such professions of faith as "We will assume that people (both the groups we study and the members of the class) always do the best that they can." The guidelines make it clear that one may not restrict one's changes to the intellectual: "We will address the emotional as well as the cognitive content of the course material. We will work to break down the fears that prohibit communication."

Sharon Ulmar, assistant to the chancellor for diversity and equal opportunity at the University of Nebraska at Omaha, handed out a flyer titled "Can [A] Diversity Program Create Behavior Changes?" Her program's mode of self-evaluation was to measure "the number of participants that took action based upon the awareness they learned from [the] program." Among the units of "awareness" successfully acquired were the following (some of which surely might strike one as more problematic than others): "gays and lesbians no different than [sic] others"; "handicap accessibility is for those who are handicaped [sic]"; "difficult to make a decision about own beliefs when others are watching"; "module allowed participant to witness subtle behaviors instead of hearing about it"; and the ineffably tautological "understanding commonalities of each individual may be similar to yours."

Denise Bynes, program coordinator for Adelphi University's Center for African-American Studies Programs, distributed a "Conflict Resolution Styles Questionnaire" for students, all of whom are to be categorized at the end as one of the following: "competing, avoiding, accommodating, compromising, and collaborating." The handout also presents the "basic values" of each American ethnic group. For white Americans, these are "Freedom/liberty/privacy; equality/fairness; achievement/success; individualism/self-interest; economical use of time; comfort." For African-Americans, "Ethnic pride, heritage, history; kinship bonds/family/motherhood; equality/fairness; achievement; respect; religion/spirituality." For Asian-Americans, "Reciprocal social duties; self-control/courtesy/dignity; devotion to parents; tradition (family, culture, the past); duty/hard work/diligence." Each group also has its own particular "overview" of nature, logic, time, society, and interpersonal relationships. Whites wish to "control" nature, for example; Hispanics, to live in "harmony" with it; blacks, to "overcome" it; and Asians, to "be adjusted to" and "accept" it. Whites are "rational, logical, analytical"; Hispanics, "rational, ethical"; blacks, "allegorical and synthetical"; and Asians, "intuitive, holistic, tolerate inconsistencies."

According to a formal presentation by Bynes and her colleague at Adelphi, Hinda Adele Barlaz, all of these materials were acquired during "training" by the U.S. Department of Justice Community Relations Service, a program so effective that "it was very hard to get any of the other white members of the committee [Barlaz was white] to go for the training that the Department

of Justice provided free of charge. The white members of the [Adelphi Prejudice Reduction] Committee had been so alienated by the training that they didn't want to go back."

What do these presenters in Nebraska, typical of those now governing offices of student life and residence, believe about the re-education of our college students? The keynote speaker at the conference was Carlos Muñoz, professor of ethnic studies at the University of California at Berkeley. He explains in an interview that to create an appropriate environment on campus, one has "to do as much outreach as possible away from the classroom, into the dorms, into the places where students live." Such work should begin during freshman orientation, continue throughout a college experience, and be mandatory.

Amirall-Padamsee from Syracuse argues that "students of color need to be nurtured as insightful leaders of our community" and that "they must be formally trained in anti-oppression theory and related skill building." "White students," in turn, "have to be trained as allies in change." (*Ally* is a code word in sensitivity training circles. As the "diversity facilitator" Hugh Vasquez of the Todos Institute explains in a widely used manual, an "ally" is someone from "the dominant group" who is aware of and articulates his unmerited privilege and who intervenes on behalf of mistreated groups.)

The goal of such training, according to Amirall-Padamsee, is "to produce graduates who are individuals committed to educational and social justice, and not just a tolerance of, but a validating of difference." To accomplish that she says, "we need to define and implement ways to translate education to behavioral change." In addition, she boasts, she has access to federal work-study funds, and she uses that position—and her capacity to dismiss people— "to try to make a positive change in the way that the student is thinking."

Tovar, formerly of Oklahoma State University and now at the University of Oklahoma, declares in an interview at the conference that "at OSU we have all kinds of sensitivity training." She describes an incident involving fraternity brothers who had been disrespectful of Native American culture: They ended up "incredibly emotional....These fraternity kids broke down." OSU also has mandatory multicultural freshman orientation sessions.

Bynes, also the co-chairman of the Prejudice Reduction Committee at Adelphi University, says the committee's emphasis is on training individuals how to interact "with a diverse student body," with "separate training for students...[and] special sessions on student leadership training." This "cultural and racial awareness training would benefit all members of the Adelphi community, both in their university and personal lives." The committee would get people to talk about "'what I like about being so-and-so,' 'what I dislike about being so-and-so,' and 'the first time I encountered prejudice,'" all exercises that the facilitators had been shown and had experienced in their own "training" by the Justice Department.

Bynes is a kind, accomplished, candid, and well-meaning woman. As she explains, "White people must have... sensitivity training...so that they can become aware of white privilege." Mandatory sensitivity training ideally should include both students and faculty, but "there are things that we can't dictate to the faculty because of the fact that they have a union."

Mandatory sensitivity training ideally should include both students and faculty, but "there are things that we can't dictate to the faculty because of the fact that they have a union," says one diversity advocate at Adelphi University.

There are painful ironies in these attempts at thought reform. Individual identity lies at the heart of both dignity and the flourishing of an ethnically heterogeneous society. Black students on American campuses rightly decry any tendency of university police to stop students based on race. Their objections are not statistical but moral: One is an individual, not an instance of blood or appearance. The assault on individual identity was essential to the horror and inhumanity of Jim Crow laws, of apartheid, and of the Nuremberg Race Laws. It is no less inhuman when undertaken by "diversity educators."

From the Inquisition to the political use of Soviet psychiatry, history has taught us to recoil morally from the violation of the ultimate refuges of self-consciousness, conscience, and private beliefs. The song of the "peat bog soldiers," sent by the Nazis to work until they died, was "*Die Gedanken sind frei*," "Thoughts Are Free," for that truly is the final atom of human liberty. No decent society or person should pursue another human being there. Our colleges and universities do so routinely.

The desire to "train" individuals on issues of race and diversity has spawned a new industry of moral re-education. Colleges and universities have been hiring diversity "trainers" or "facilitators" for 15 years, and the most famous of them can command $35,000 for "cultural audits," $5,000 for sensitivity workshop training, and a sliding scale of honoraria, some for not less than $3,000 per hour, for lectures.

This growing industry has its mountebanks, its careerists, its well-meaning zealots, and its sadists. The categories often blur. Three of the most celebrated facilitators at the moment are Edwin J. Nichols, of Nichols and Associates in Washington, D.C.; Hugh Vasquez, of the Todos Institute in Oakland, California; and Jane Elliott, the Torquemada of thought reform. To examine their work is to see into the heart of American re-education.

Nichols first came to the attention of critics of intrusive political correctness in 1990, when he led an infamous "racial

sensitivity" session at the University College of the University of Cincinnati. According to witnesses, his exercise culminated in the humiliation of a blond, blue-eyed, young female professor, whom he ridiculed as a "perfect" member of "the privileged white elite" who not only would win "a beauty contest" but even "wore her string of pearls." The woman, according to these accounts, sat and sobbed. These contemporaneous revelations did not harm Nichols' career.

According to the curriculum vitae sent by his firm, Nichols studied at Eberhardt-Karls Universität in Tubingen, Germany, and at Leopold-Franzens Universität in Innsbruck, Austria, "where he received his Doctor of Philosophy in Psychology and Psychiatry, cum laude" (a rare degree). In some publicity material, he states that he founded a school of child psychology in Africa; at other times, he modestly withholds that accomplishment.

Skin Deep, a popular diversity training film, begins with ominous news clips and announces that at American colleges, "racial violence," "racism," "slurs," and "racist jokes" are endemic, and "intolerance has once again become a way of life."

Nichols' schedule of fees is almost as impressive as his schedule of thought reform. He charges $3,500 for a three-hour "Basic Cultural Awareness Seminar," plus travel and per diem. For a plain old "Workshop," he gets $4,000–$5,000 plus expenses. This makes his staple offering—a "Full Day Session (Awareness Seminar and Workshop)"—a bargain at $5,000 plus expenses. For a "Cultural Audit," he gets $20,000–$35,000 (he recently did one of these for the University of Michigan School of Medicine). The Bureau of Labor Statistics at the Department of Labor paid him $15,000 for diversity training; the Environmental Protection Agency got him cheaply at $12,000.

Business is booming. Nichols has brought awareness to the employees of six cabinet departments, three branches of the armed services, the Federal Reserve Bank, the Federal Aviation Administration, the Internal Revenue Service, and the FBI; the Goddard Space Center, the Naval Air Warfare Center, Los Alamos National Laboratory, and NASA; the Office of Personnel Management, the Nuclear Regulatory Commission, and the Social Security Administration. He has enlightened city and county governments, whole school systems, various state government departments, labor unions, several prestigious law firms, and the Archdiocese of Baltimore. His clients include "Fortune 500 Corporations, foreign governments, parastatals, associations, health and mental health systems," and he has been a consultant to offices of "The British Commonwealth of Nations" and "organizations in Germany, Austria, Switzerland, Japan, Latin America...Singapore, Malaysia, and China." He has a very long list of academic clients, and he was a centerpiece of Johns Hopkins' 1999 freshman orientation.

What does Nichols believe? He believes that culture is genetically determined, and that blacks, Hispanics, and descendants of non-Jewish Middle-Eastern tribes place their "highest value" on "interpersonal relationships." In Africa, women are the equal of men. Whites were altered permanently by the Ice Age. They value objects highly, not people. That is why white men commit suicide so frequently when they are downsized.

Nichols calls his science of value systems "axiology," and he believes that if managers and administrators understand these cultural differences, they can manage more effectively, understanding why, according to him, blacks attach no importance to being on time, while whites are compulsive about it. Whites are logical; blacks are intuitive and empathetic. Whites are frigid; blacks are warm and spontaneous. Whites are relentlessly acquisitive; nonwhites are in harmony with nature. White engineers, for example, care about their part of something; Asian engineers, managers should know, care about the whole. Whites are linear; nonwhites have a spiral conception of time. Nichols has a handout that he frequently uses. Whites, it explains, "know through counting and measuring"; Native Americans learn through "oneness"; Hispanics and Arabs "know through symbolic and imagery [sic]"; Asians "know through striving toward the transcendence [sic]." Asking nonwhites to act white in the workplace is fatal to organizational harmony. Understanding cultural axiology is essential to management for the 21st century. Now, reread his list of clients.

Two diversity training films widely used at major universities reveal the techniques and the characters of two other leading thought reformers. *Skin Deep*, the 1996 film funded by the Ford Foundation, records an encounter at a retreat between college students from around the country. The facilitators are not active in the film, but the published guide tells you what they do and identifies their leader as Hugh Vasquez.

Skin Deep begins with ominous news clips from the major networks about "racial violence," "racism," "slurs," and "racist jokes" on campus. It announces that "at these training grounds for our future leaders, intolerance has once again become a way of life." We meet white, Hispanic, black, and Asian-American students from the University of Massachusetts at Amherst, the University of California at Berkeley, and Texas A&M. The whites have terrible stories to tell: They have grown up in white neighborhoods; their families have prejudices; and they feel rejected by people of color. The people of color have terrible stories to tell: They suffer frequent abuse in white America, and they are sick of it.

Neither group is typical of a college population. The whites, we gradually learn, have been members of organizations working for racial understanding. The students of color all use terms like "allies," suggesting that they've been through sessions like this before. There is a Jewish woman who objects to being thrown into the nightly "white caucus," where she doesn't really belong. She also anguishes over whether all of the things she has been told at the encounter about the Jewish role in the suffering of people of color are true. (Vasquez responds candidly to an inquiry on this, revealing that some of those allegations were outright anti-Semitic, and that the Jewish girl was looking for "allies" who would not "scapegoat" Jews.) In short, the white students talk about the stereotypes they have learned, and the students of color reflect deeply on the cruelty of race in America.

What moves American thought reform is a denial of individual identity and responsibility, an insistence on group victimization and rights, and the belief that America is an almost uniquely iniquitous place in the world, without opportunity, legal equality, or justice.

When white students initially suggest that they personally did not do terrible things, the students of color fire back with both barrels. A first reply goes immediately to the heart of the matter: "One thing that you must definitely understand is that we're discussing how this country was founded, and because you are a white male, people are going to hate you." A black student explains, more patiently: "Things are going on *presently*: the IMF, presently; the World Bank, presently; NAFTA, presently; Time Warner, presently; the diamond factories, presently; reservations, presently; ghettos, presently; barrios, presently. Slavery still exists." (Diamond factories?) The Chicana, Judy, lets them know that "I will not stop being angry, and I will not be less angry or frustrated to accommodate anybody. You whites have to understand because we have been oppressed for 2,000 years. And if you take offense, so?" (Two thousand years?) And from Khanh, a bitter Vietnamese student: "White people need to hear that white people are very affected by internalized racism....As a person of color growing up in this society, I was taught to hate myself and I did hate myself. If you're a white person, you were taught to love yourself....If you don't know that you have shit in your head, you'll never deal with racism."

By the end, the students of color have had the grace to state that if the white students become real "allies," their victims can let go of their anger a bit. White students have come to realize that the pieties their parents taught them, such as an honest day's pay for an honest day's work, apply only to whites in America.

In short, what moves the film (and American thought reform) is a denial of individual identity and responsibility, an insistence on group victimization and rights, and the belief that America is an almost uniquely iniquitous place in the world, without opportunity, legal equality, or justice. "I want you to know," an Hispanic male explains, "that because of the system, my cousin was shot...and then another cousin was shot." The tribalism of the exploited Third World expresses a core truth: You are your blood and history. Let the children of the guilty denounce their parents. Let the victims stake their claims. Let the cultural revolution begin.

Vasquez is a frank and warm man by e-mail. He explains that the filmmaker never showed the facilitators because she wanted to focus solely on the students, but that "it took a great deal of planning and structure and facilitation to make what happened happen." In his own mind, he was devoted to eliminating "blame, ridicule, judgements, guilt, and shame" among all of the students in the group, and he sounds sincere when he writes that his goal is to eliminate "individual and institutional mistreatment of any group or culture." But his effect, whatever his intention, is frightening, atavistic, and irrational, and his means are deeply intrusive.

Americans surely need to study, discuss, and debate, frankly, matters of race and ethnicity. Reasonable people disagree on profound questions. Some of the issues are empirical: Is aversion to difference acquired above all from culture or evolution? Should we be more startled by America's success in creating a nation of diverse backgrounds or by the difficulties it has in doing so?

Some of the issues are moral and political: Should we favor legal equality with differential outcomes or equality of outcomes even at the price of legal inequality? Are today's whites responsible for the crimes of 19th-century Southern slave owners? What are the benefits and costs of a society based on individual responsibility? These are not issues for indoctrination. Indeed, they do not even reflect everyone's chosen intellectual or moral agenda, and free individuals choose such agendas for themselves.

Vasquez's "Study Guide" for *Skin Deep* explains that the final goal of using the film in "colleges, high schools, corporations, and the workplace" is to produce "action strategies and...networks for working against racism," for which there is a page of strategy. The guide further explains the necessity of affirmative action, the "myths" of reverse discrimination and balkanization, and the reality of white privilege. It teaches the need for the privileged to become "allies" of the oppressed, and it focuses on the nightmare of "internalized oppression." The internalization of oppression manifests itself in "self-doubt...fear of one's own power; an urgent pull to assimilate; isolation from one's own group; self-blame for lack of success; [and] fighting over the smallest slice of the economic pie."

The guide also has a rare explicit endorsement of "political

correctness," reminding facilitators that "language was a prime factor" in the murder of 6 million Jews, that language perpetuates racism, and that it is wrong to believe that "anything people say should be left alone simply because we all have the right to free speech....The challenges to political correctness tend to come from those who want to be able to say anything without repercussions." (He did not have Khanh in mind.)

One diversity guide reminds facilitators that "language was a prime factor" in the murder of 6 million Jews, that language perpetuates racism, and that it is wrong to believe that "anything people say should be left alone simply because we all have the right to free speech."

Skin Deep is a kid's cartoon, however, compared to Jane Elliott's *Blue Eyed.* Elliott has been lionized by the American media, including Oprah Winfrey, and she is widely employed by a growing number of universities. Disney plans to make a movie of her life.

Blue Eyed arose from Elliott's elementary school class in Riceville, Iowa, where, starting in 1968, she inflicted upon her dyslexic students an experience in which they were loathed or praised based upon their eye color. According to Elliott, she was ostracized for this experiment, her own children were beaten and abused, and her parents (who were racists, she informed a Dutch interviewer) were driven into isolation, bankruptcy, and despair because they had raised "a nigger lover" (one of her favorite terms).

In her modest explanation, once news of her exercise with the children made it onto national television, the people of Riceville feared that blacks across America would assume that everyone there was like Elliott and would move to their town. To punish her for that, they stopped buying from her father. Elliott also revealed to her Dutch interviewer that she abandoned teaching school in 1984 to devote herself full time to diversity education, for which she receives $6,000 per day from "companies and governmental institutions."

In *Blue Eyed,* masochistic adults accept Elliott's two-and-a-half-hour exercise in sadism (reduced to 90 minutes of film), designed to make white people understand what it is to be "a person of color" in America. To achieve this, she divides her group into stupid, lazy, shiftless, incompetent, and psychologically brutalized "blue eyes," on the one hand, and clever and empowered "brown eyes," on the other. Some of the sadism is central to the "game," but much is gratuitous, and it continues after the exercise has ended.

Elliott is unbearably tendentious and ignorant. To teach what an IQ test truly is, she gives the brown eyes half of the answers to an impossible test before the blue eyes enter the room, explaining that, for people of color, the IQ exam is "a test about which you know absolutely nothing." IQ tests only measure "white culture." They are a means of "reinforcing our position of power," and "we do this all the time in public, private, and parochial schools," using "culturally biased tests, textbooks, and pictures on the wall...for white people." (Fortunately for Elliott, it appears there were no Asian-Americans or psychometricians in her group.)

Elliott often describes the 1990s as if they were the 1920s; indeed, in her view, nothing has changed in America since the collapse of Reconstruction. Every day in the United States, she explains, white power keeps black males in their place by calling them "boy" (two syllables, hissed), "and we do it to accomplished black males over 70, and we get away with it." We tell blacks to assimilate, which means merely to "act white," but when they try that, we put them in their place and change the rules. For example (this in 1995), whites now are building up Colin Powell, but as soon as they build "this boy" up, they will kick him down. For Elliott, the Powell boom was a conscious conspiracy to humiliate and disorient blacks.

She teaches her "blueys" with relish that protest accomplishes nothing, because if blacks protest, "we kill them." It is not smart to speak up or act clever, which is why blacks appear passive and stupid. The lesson: "You have no power, absolutely no power. ...Quit trying." Blacks might try to "win" on the inside, but it is almost impossible to validate oneself when white society puts you down "all day, every day."

Even if a "bluey" understands the implications of the workshop, or even if a white woman understands male prejudice, it bears no real relationship to the daily suffering of every black: "You do not live in the same country as that [black] woman. You live in the USA, but you do not live in the same country as she does." Blacks such as Shelby Steele (singled out by name), who speak of transcending race, delude themselves, because one might transcend one's skin color but never society's behavior: "All you can do is sit there and take it." People call the exercise cruel, Elliott explains, but "I'm only doing this for one day to little white children. Society does this to children of color every day." She stands over briefly assertive "blueys" and humiliates them, explaining that if this makes you sick to your stomach for a few hours, now you understand why blacks die younger.

In short, this is America, and there truly is no hope. Nothing ever changes. No one can succeed by effort. Culture, society, and politics all are static. "White privilege" controls all agencies of power, influence, and image, and uses all the means that arise from these to render "people of color" psychologically impotent, confused, passive, and helpless. So either vent your hatred or assume your guilt.

There is no redemption except guilt, but there is a political

moral. After "teaching" a "bluey" to submit totally to her authority, she asks if that was a good lesson. The workshop thinks it was. No, she says with venom, submission to tyranny is a terrible lesson, but "what I just did to him today Newt Gingrich is doing to you every day...and you are submitting to that, submitting to oppression."

The facilitators' guide and publicity for *Blue Eyed* states things honestly: Elliott "does not intellectualize highly emotionally charged or challenging topics...she uses participants' own emotions to make them feel discomfort, guilt, shame, embarrassment, and humiliation." Facilitators are urged to use the raw emotions of *Blue Eyed* (blueys do cry a lot) to tap the reactions of the viewers. They should not expect black participants to "bleed on the floor for whites," but they should get whites to "stretch" and "take risks." The facilitators should be prepared for very strong and painful emotions and memories from the participants. The ultimate goal of the film: "It is not enough for white people to stop abusing people of color. All U.S. people need a personal vision for ending racism and other oppressive ideologies within themselves."

Most students tune it out, just as most students generally have tuned out abuses of power and diminutions of liberty. One should not take heart from that. Where students react, it is with an anger that exacerbates the balkanization of our universities.

Elliott does mean everyone. In 1996, she told her audience at Kansas State University that all whites are racists, whatever they believe about themselves: "If you want to see another racist, turn to the person on your right. Now look at the person on your left." She also believes that blacks were in America 600 years before whites. She told the students at Kansas State that if they were angry at her, they should write letters, but that they must do so without paper, alphabet, or numbers, all of which were invented by people of color. Whites, in Elliott's view, did have a certain creativity. Betraying a breathtaking ignorance of world history, she told the Australian Internet magazine *Webfronds* in 1998 that "white people invented racism." Other than that, however, whites were quite parasitic.

"You're all sitting here writing in a language [English] that white people didn't come up with," she told the magazine. "You're all sitting here writing on paper that white people didn't invent. Most of you are wearing clothes made out of cloth that white people didn't come up with. We stole those ideas from other people. If you're a Christian, you're believing in a philosophy that came to us from people of color."

Jane Elliott has lived through revolutionary cultural changes without taking note of any. She teaches only helplessness and despair to blacks and only blood-guilt and self-contempt to whites. She addresses no issue with intellectual seriousness or purpose. She also is the reigning star in thought reform these days. On May 7, 1999, CBS News ran a feature on her that declared: "For over 30 years, Jane Elliott has waged a one-woman campaign against racism in America." CBS might want to rethink the notion of "racism."

Even traditionalist campuses now permit the ideologues in their offices of student life to pursue individuals into the last inner refuge of free men and women and to turn students over to trainers who want them to change "within themselves." This is a return of *in loco parentis*, with a power unimagined in prior ages by the poor souls who only tried to keep men and women from sleeping with each other overnight. It is the university standing not simply in the place of parents but in the place of private conscience, identity, and belief.

From the evidence, most students tune it out, just as most students at most times generally have tuned out abuses of power and diminutions of liberty. One should not take heart from that. Where students react, it is generally with an anger that, ironically and sadly, exacerbates the balkanization of our universities. The more social work we bring to our colleges and universities, the more segregated they become, and in the classifieds of *The Chronicle of Higher Education* during the last few years, colleges and universities by the hundreds have advertised for individuals to oversee "diversity education," "diversity training," and "sensitivity training."

Orwell may have been profoundly wrong about the totalitarian effects of high technology, but he understood full well how the authoritarians of this century had moved from the desire for outer control to the desire for inner control. He understood that the new age sought to overcome what, in Julia's terms, was the ultimate source of freedom for human beings: "They can't get inside you." Our colleges and universities hire trainers to "get inside" American students.

Thought reform is making its way inexorably to an office near you. If we let it occur at our universities and accept it passively in our own domains, then a people who defeated totalitarians abroad will surrender their dignity, privacy, and conscience to the totalitarians within. ◆

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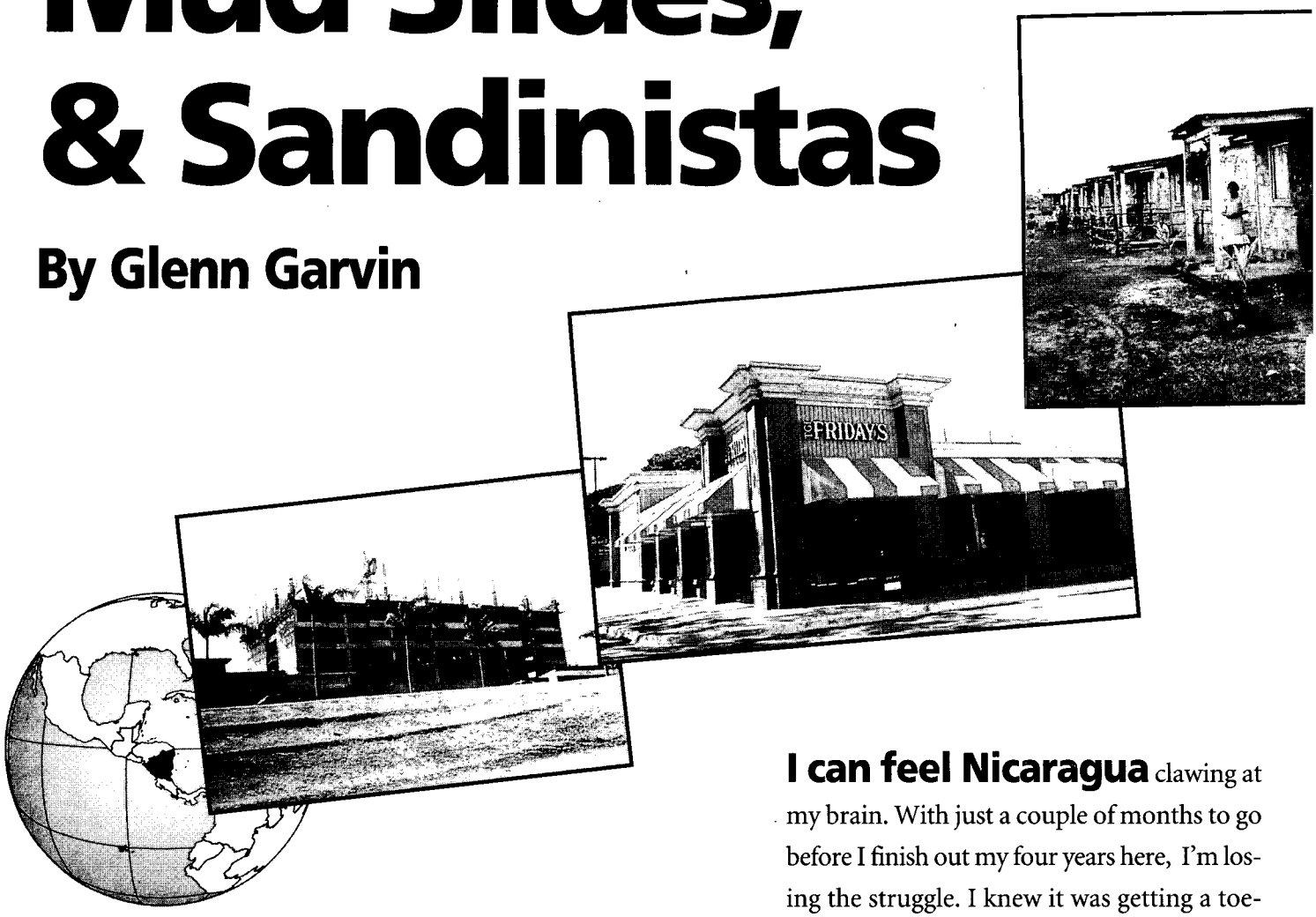
Earthquakes, Mud Slides, & Sandinistas

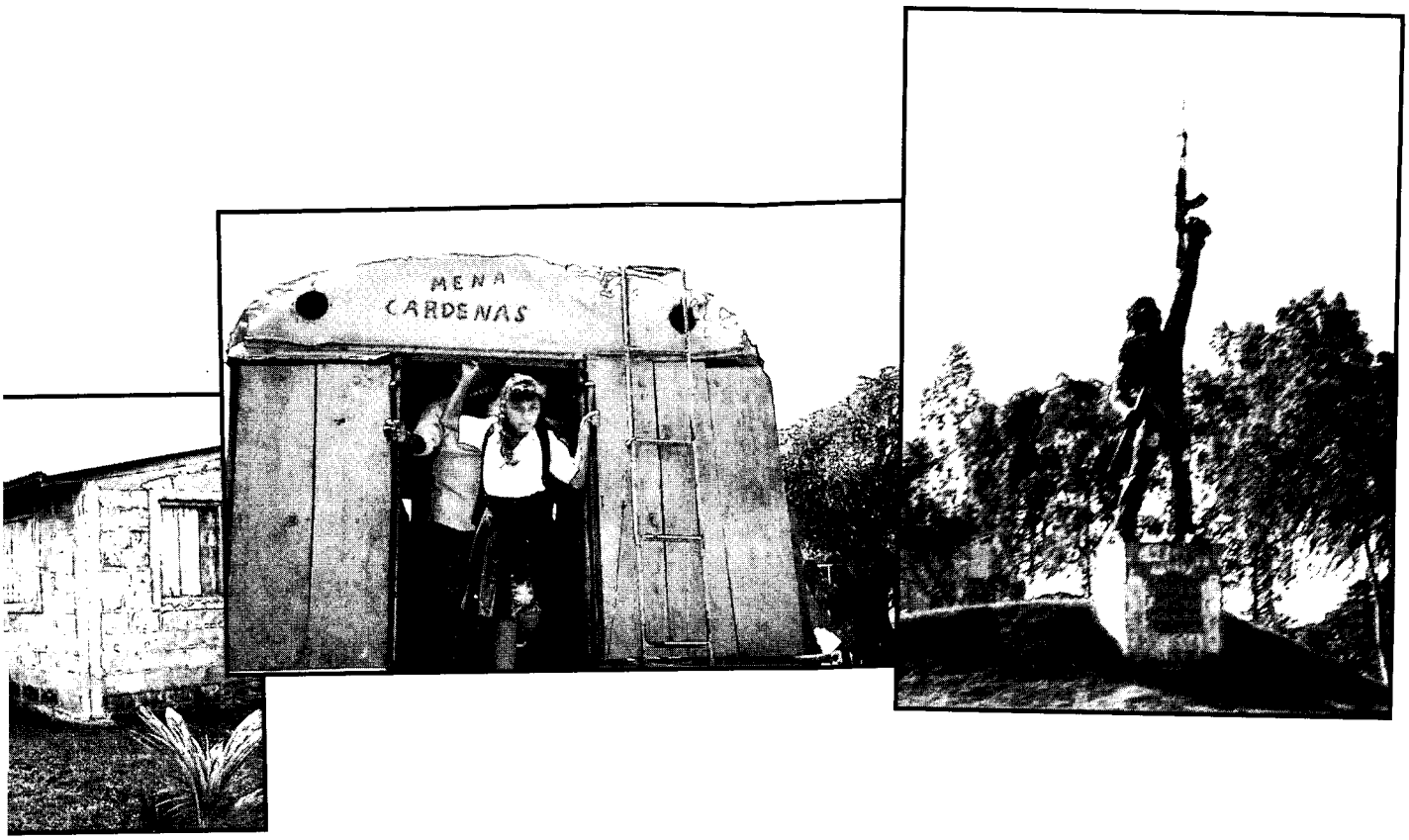
By Glenn Garvin



Nicaragua is finally recovering from natural and man-made disasters. So why is it still so crazy?

I can feel Nicaragua clawing at my brain. With just a couple of months to go before I finish out my four years here, I'm losing the struggle. I knew it was getting a toehold in there when I didn't even consider it weird to discover that the new TGI Friday's here had a secret menu. "Well, yes," the waitress confirmed, her voice dropping a conspiratorial octave. "It's true, you can get a steak cooked in Jack Daniels, the North American whiskey. Or chicken. Or beef ribs. But we don't advertise it." Why not? I won-

PHOTOS: SUE MULLIN



dered aloud. She rolled her eyes at my ignorance and flounced away to the kitchen. Yet another mystery of this country that will never be solved; and one more cluster of my brain cells addled probably beyond recovery.

I will not be the first gringo to have gone nuts here. It's been happening at least since the 1850s, when the American adventurer William Walker declared himself emperor, made English the official language, and celebrated by burning down what was then the country's largest city. The most recent acclaimed case was that of actor Gary Merrill, who took up residence in Managua's Inter-Continental in the 1980s and liked to wander the lobby in pre-dawn hours wearing a dress.

Merrill was carrying on a grand tradition of gringo insanity at the Inter-Con, which hosted, for a time, the loopiest American of them all, the billionaire Howard Hughes. It's probably not fair to say that Nicaragua *drove* Hughes crazy—his brain supposedly had been ravaged by untreatable syphilis for more than four decades before he arrived in 1972—but he set what would become the gold standard for loony-tune behavior by American guests.

Hughes rented the entire top floor of the Inter-Continental and spent four months

From left: Plaza Real luxury hotel construction site; TGI Friday's in Managua; a couple who lost their home to Hurricane Mitch stands in front of their new home; a schoolgirl exits a jerry-rigged school bus; and a revolutionary statue in old downtown Managua

there, lying naked in a BarcaLounger chair and watching old James Bond movies around the clock. Aside from a single meeting with Nicaragua's military strongman Anastazio Somoza ("Say, you speak pretty good English for a foreigner," he told Somoza), his only other diversion was testing the vegetable soup he ordered in vast quantities from room service.

The Inter-Con chefs had to cook three batches separately from everyone else's; Hughes would sample them, choose one, and the rest had to be thrown away. The chefs were given precise measurements of the maximum size of peas to be used, and Hughes kept a slide-rule nearby to measure any suspiciously large legume that found its way into his room.

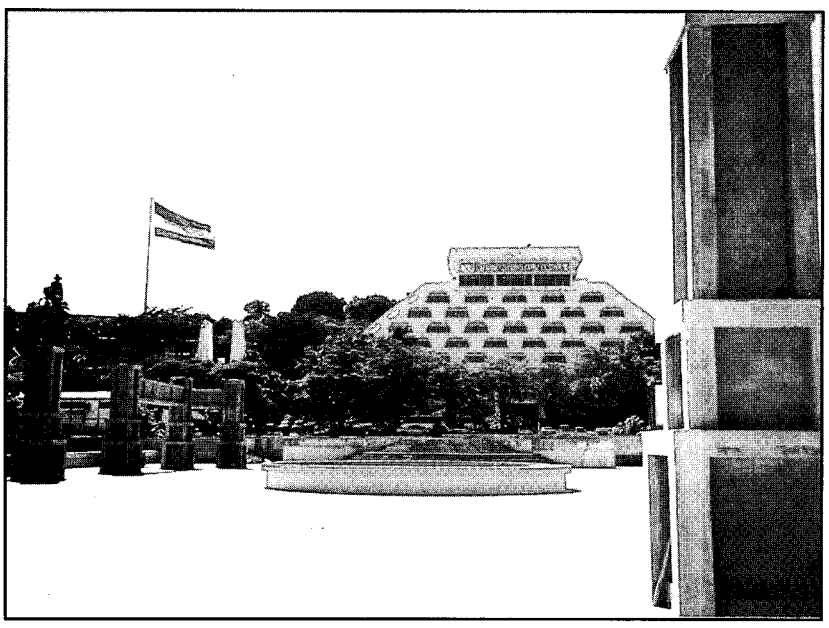
Thus diverted, Hughes might have lived out an idyllic existence here, but for the brutal earthquake that shook Managua nearly to pieces on December 23, 1972. Once aides found his underwear—which hadn't been seen for months—they toted him down eight flights of stairs. This being Managua, the stairwell was being used to store the hotel's spare furniture, and Hughes had to be dragged over piles of sofas and beds, not to mention a dozen naked airline stewardesses who were hiding there after being rousted from bed by the quake.

Nicaragua's lunatic streak is the great constant in its history. I wrote about this place in the 1980s, when it was an economically brain-dead Marxist enclave in which the only growth industry was the money supply, inflating so explosively that waiters stopped counting the vast piles of bills that it took to buy lunch. ("A little more, give me another stack...Yeah, that looks about right.") I write about it now in the 1990s, when privatizations, cell phones, and hookers are all the rage. I've studied its history, going back to the times when Spanish explorers put up crosses at the mouth of the Santiago de Masaya volcano in an attempt to keep Lucifer himself from roaring out of what was obviously the very mouth of Hell. And I can tell you that this place has always been tiptoeing along the ragged edges of sanity.

Even now, they warn visitors to Masaya to get off the streets before noon on Good Friday, when the carved figure of Gestas, *one of the thieves* crucified along with Jesus, climbs down off his cross at the Calvary Church of Masaya and runs through the streets smacking people. His favorite targets are sinners and blasphemers, but righteousness is no shield; Gestas' work ethic is so potent that pretty much anybody is fair game. One year he supposedly hanged a local painter who dared to touch up his colors in anticipation of Holy Week. Masayans with grudges against their neighbors leave upside-down candles in front of Gestas early in the week in hopes that he'll use them to burn down their enemies' homes.

Given this sort of work hazard—where are OSHA and personal injury lawyers when you really need them?—you can perhaps understand why I'll soon be leaving Nicaragua for a rest. And if the place is still more than a little nuts, I'll nonetheless be leaving behind a country much changed from the 1980s.

Inter-Con Hotel: Long the favored residence of crazy gringos, the Inter-Con was home to Howard Hughes, who demanded the hotel chefs cook three batches of vegetable soup a day to his exacting specifications, and of actor Gary Merrill, who liked to wander the lobby in pre-dawn hours wearing a dress.



SUE MULLIN

It pains everyone in the chattering classes to say it, but Nicaragua, which reeled backward a century or more under the Marxist rule of the Sandinistas, is moving forward again. The economy has expanded 5 percent or more for three consecutive years, the longest growth surge in recorded Nicaraguan history. The construction industry sets new records for consumption of sand, gravel, and cement every year, as new hotels, factories, and shopping malls reshape the skyline every day.

To understand how remarkable that is, you have to have been here in the 1980s, when Nicaragua was the economic equivalent of a Nazi medical lab, where nobody cared how much the patient screamed. The nine Sandinista *comandantes* sat around a table each morning and *planned.*

They decided it was neither fair nor orderly for so many different employers to pay so many different salaries for so many different jobs. So they set 28 different salary levels, then spent endless weeks assigning every single job in the country to one of them. I've forgotten now what the formal name of the salary table was, but everybody called it by its Spanish acronym, SNOTS, which as the

years rolled by began to seem appropriate in more ways than one. Interestingly, it turned out that if you paid electrical engineers the same as gas station attendants, they all left the country. Who knew?

That sort of thing happened over and over again, as the *comandantes* made economic terms like *fluidity* and *fungibility* and *globalization* spring to life in a way that my college economics textbooks never could. The *comandantes* decided competition among slaughterhouses was distorting the price of beef, so they nationalized them and set one universal price. The cattle walked across the border to Costa Rica. The *comandantes* saw no reason that shrimp should be so expensive, and soon the shrimp boats began docking in Honduras.

There were fun and games, too, with production levels. As a young reporter in the United States I went to countless city council meetings where frustrated bureaucrats raged on and on about how their town had too many T-shirt shops, or video game parlors, or whatever. But their power to do anything about it was always circumscribed by some vexatious judge or law.

The *comandantes*, however, had no such constraints. In the mid-1980s, looking over the numbers on toilet paper, they discovered Nicaraguans were using *too damned much.* Who had *authorized* this? Who had proven a *need* for all that toilet paper? The percentage of gross domestic product being flushed away each year could be put to better use, the *comandantes* decided, and just like that—God, the city managers would have died if they could have seen it—they cut it. Pretty soon toilet paper disappeared completely from public restrooms and was carefully rationed even at the Inter-Con, where it might take a full day or even two to haggle for a new roll when the one in your room ran out. I knew the toilet paper crisis had finally bottomed out when some peasants who did a little work for a reporter friend of mine asked to be paid in toilet paper rather than cordobas.

AP / WIDE WORLD PHOTO

Current President Arnoldo Aleman: The hard-drinking, back-slapping pol once threatened to bulldoze Daniel Ortega's house. Aleman is only marginally fonder of journalists. Once he admonished the press by thrusting his fingers at them in the sign of a cross and yelling "Back, you paparazzi!"

So this was Nicaragua when democracy returned in 1990, a place where the currency literally wasn't worth wiping your butt with, a place where the only growth export was refugees, a place where the national motto was, "Thank God for Haiti"—because it was the only thing that kept Nicaragua from finishing dead last on every single economic trend chart in the hemisphere.

How do you rebuild a place like that? Obviously, the simple fact that 15 years of near-continuous warfare (first the Sandinista revolution against the Somoza dynasty, then the counterrevolution against the Sandinistas) had ended was a major step. Sweeping away the nuttiest of the Sandinista economic policies—SNOTS, the government purchasing and export monopolies in so many key industries, the collectivization of agriculture—was another.

But President Arnoldo Aleman, elected in 1996, has gone further, attacking not only the Marxist remnants of the Sandinista economy but the crony capitalism that has turned so many Latin American countries into family farms for a handful of swaggering plutocrats. He eased restrictions on foreign investment and hacked away at protectionist import duties—especially on what economists call inputs, stuff like seed and fertilizer and concrete, the building blocks of the economy.

And in a bold attack that was little noticed outside the country but made him plenty of powerful enemies inside, he did away with a law that granted a handful of Nicaraguan firms monopolies on importing those inputs. It worked like this: If you were the first guy to import, say, Kodak film into Nicaragua, then you were the *only* guy who could import it—no matter what Kodak thought about it.

Now, a monopoly on Kodak film, while it may be unfair and annoying, is probably not the end of the world—there's Fuji and Polaroid and lots of other brands. But holding the exclusive rights to import the only pesticide known to kill Nicaraguan

After the Storm: Even when Nicaragua hasn't been at war (which is almost never), it's been nature's punching bag. Most recently Hurricane Mitch wreaked havoc on the country. (Above and top right: rebuilding efforts after the hurricane. Bottom right: lining up for food at a school turned refugee shelter.)

boll weevils, or the only fertilizer suited to the soil in Nicaraguan coffee country, gives you a choke hold on a huge chunk of the economy. That's why Aleman's most relentless enemies in Nicaragua are not Sandinista die-hards but zillionaire oligarchs.

It's no accident that the Nicaraguan economy really took off after Aleman got his reforms in place. But Managua being located well off all known journalistic trade routes these days, you don't read much about any of this. The occasional foreign reporter who stumbles in by error inevitably mentions the new shopping malls and hotels only by way of pointing out that most Nicaraguans can't afford them. The jobs created by their construction—and the jobs that *will* be created by the tourists and business travelers they'll lure—are never noted.

The story, it seems, is never that life is improving, little by little, for most Nicaraguans, but that for a few, it's improving quickly and bounteously. It is only recently, watching the way other reporters describe Nicaragua now, that I have come to understand why the Sandinistas got such favorable press in the 1980s, when they were wrecking their own country. What mattered to the journalists was *equality*, and if the Sandinistas achieved it only by plunging the entire country into poverty, well, it was still *equality*.

Despite their degrees and lofty places of employment, the foreign journalists ultimately draw a picture of this country that is no more accurate, and considerably less interesting, than that drawn by their Nicaraguan counterparts, who gleefully specialize in tales of exorcisms, vampires, and doctors who counsel female patients that gastrointestinal distress can be quieted by oral sex. Certainly no foreign journalist would break into a long discourse on the International Monetary Fund, as a Nicaraguan radio reporter did last year, to ask the grizzled Sandinista *comandante* Tomas Borge if he still had both his testicles.

Actually, the remarkable thing is not that the reporter was more interested in Borge's testicles than in his views on economics—Borge's expertise on the latter stems from having spent the Sandinista party newspaper into a bankruptcy so profound that even the workers' social security payments were lost—but that anyone wanted to talk to him about anything at all. The Sandinista party, once considered the blueprint for the leftist future of Latin America, has withered away into irrelevance.

With their guerrilla days behind them, the Sandinistas have never really gotten the hang of electoral politics, losing four national elections in a row by overwhelming margins. They've tried to restyle themselves as a center-left party, even abandoning the old Sandinista hymn ("We fight against the *yanqui*, enemy of humanity") for well-known socialist Ludwig van Beethoven's "Ode to Joy." That's not to say that they've turned away completely from the old school: At a party congress last year, there was prolonged applause for observer delegations from Libya, China, and Vietnam, and a moment of silence in honor of recently deceased Cuban spymaster Manuel Piñeiro.

But many of the Sandinista leaders have in fact jumped ship. Jaime Wheelock, the central committee member who authored scathing tomes of Marxist history such as *Imperialism and Dictatorship*, is now writing cookbooks. Humberto Ortega, once the head of the armed forces, has dropped out of sight to manage his multimillion-dollar business portfolio. (You've got to love those revolutionary pension plans.) Daniel Ortega is still head of the party, but spends most of his time fighting his stepdaughter's attempts to force him to face trial on charges that he sexually abused her for years, starting when she was 11. Those legal problems could eventually spread to the United States, where the stepdaughter says Ortega molested her during visits to the United Nations in New York. But in gringo territory, she says, Ortega insisted they take care of business inside hotel-room closets, the better to avoid the CIA spy cameras he was certain were present.

When they ruled the country in the 1980s, figuring out what the Sandinistas were up to was a maddening and mostly fruitless task for journalists. Interviews with top party officials were virtually impossible to come by, and as the years went by, even their public appearances dwindled to a few carefully managed events where questions were im-

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possible. By contrast, the staff of the current president is constantly begging him to stay away from reporters, because he can't resisting arguing with (and occasionally bellowing threats at) the cantankerous Managua press corps.

President Aleman is a hard-drinking, back-slapping pol who would have been at home in Mayor Daley's Chicago. When I interviewed him at his coffee farm outside Managua last year, he made breakfast and then told me a slew of unprintable Bill-and-Monica jokes he had read on the Internet. He once threatened to use a bulldozer to tear down the wall around Daniel Ortega's "house," a one-square-block compound that Ortega confiscated from the previous owner and then sold to himself at a five-fingered discount price of $1,000 as he was leaving office in 1990. Aleman is only marginally fonder of journalists. Once, as reporters surged into a room for a press conference with him, he thrust his fingers at them in the sign of a cross and yelled, "Back, you paparazzi!"

Nonetheless, Aleman continues the blizzard of ribbon cuttings and cornerstone layings that has continued nonstop since the day he took office. He is photographed at construction sites so often that some Nicaraguans have taken to referring to the presidential entourage as "The Flintstones."

His vice president, Enrique Bolaños, is almost as hyperactive and has an even sharper tongue. When Bolaños presided at the opening of Nicaragua's first McDonald's last year, he pronounced the occasion as nothing less than the attainment of civilization: "When foreign investors see that big M, they know we're not running around in loincloths." Not only that, he added, the french fries were pretty good: "Much better than the ones at the McDonald's in Moscow."

Actually, Nicaragua was one of the first Latin American countries to get a McDonald's franchise, way back in 1972. Unbeknownst to its corporate masters up north, the restaurant stayed open after the Sandinistas took over. Indeed, in late 1986, the author Denis Johnson published a novel set in Managua called *The Stars at Noon.* Some of the scenes took place in the McDonald's, which was described with stomach-curdling detail: "With the meat shortage, you wouldn't ever know absolutely, would you, what sort of a thing they were handing you in the guise of beef....It's the only Communist-run McDonald's ever. It's the only McDonald's where you have to give back your plastic cup so it can washed out and used again, the only McDonald's staffed by people wearing military fatigues and carrying submachine guns." When the suits at McDonald's headquarters saw that, the jig was up.

But all is forgiven now. Managua has three—count 'em, three—golden arches, to go with four

Pizza Huts, two Subways, and now even that TGI Friday's with the mysterious menu. A major hotel opened late last year; two more, including a Holiday Inn, are due by the end of 2000. A glittering upscale topless bar has risen in the Managua neighborhood that once was home to so many American reporters and revolutionary camp followers that it was known as Gringolandia.

Broken to bits by the 1972 earthquake, ground to dust by nearly two decades of war and 11 years of Marxist economics, Managua is slowly, inexorably clawing its way into the 20th century, albeit just as the rest of the world is headed for the 21st. Not that there aren't some bumps along the way. The city's two new shopping malls have given Nicaraguans their first exhilarating, terrifying glimpse of an ominous new technology: the escalator. So many thrill-seeking kids crowd around the landings on the upper floors at the Mentrocentro and Plaza Inter malls, daring one another to bolt down the rising stairs, that the managers have been driven to near-homicidal distraction.

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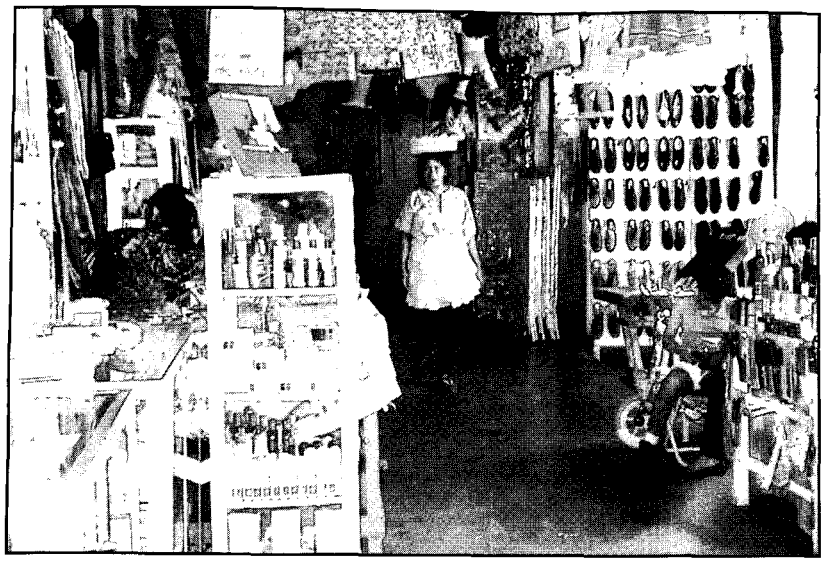
They should, perhaps, heed the

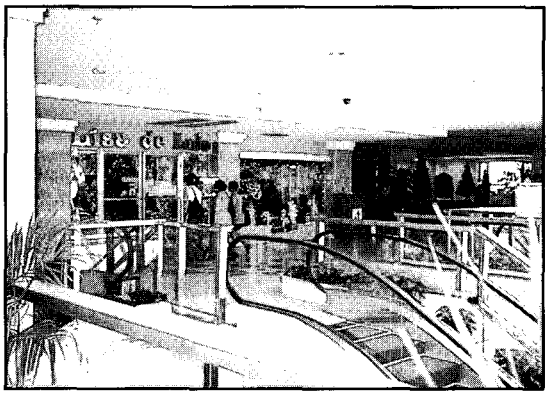


Going Shopping: An open-air market preferred by low-income Nicaraguans (above). The Plaza Inter shopping mall (below) caters to the growing middle class.

advice of the son of the owner of the country's only previous escalator, which croaked during the big 1972 earthquake. His pop had the same problem, he told me, but came up with an effective low-tech solution: "He put an employee with a belt on the first floor to spank anybody who was caught coming down the wrong way."

The one thing that hasn't changed is Nicaragua's luck. Even when the place hasn't been at war (which is almost never), it's been nature's punching bag. Three times over a 150-year time span, earthquakes have leveled Managua; volcanoes, tidal waves—you name it, Nicaragua has had it. Latest manifestation: a plague of vampire bats. Driven by Hurricane Mitch from their caves in remote northern mountainsides, the bats have resettled in urban areas and have prompted deadly epidemics of rabies and cheap Dracula jokes.

The bats may seem vaguely comic, unless you awaken one night to find one fastened to your throat. But I don't begin to have the words to describe the meteorological bloodlust with which Hurricane Mitch dismembered the villages of



northern Nicaragua, the way it left the countryside looking like it had been clawed by a giant cat. When I interviewed an 8-year-old boy who watched a mud slide barrel down a volcano during the hurricane and bury 44 of his relatives alive, I found I couldn't even write down his words. I just kept thinking of a character in Mark Harris' novel *Bang the Drum Slowly* who's found out his baseball-playing son is dying of a rare form of cancer. "My son," he says, "got one shit deal."

But where else but Nicaragua could you ever hope to find a character like the delirious Eden Pastora, the famous Commander Zero who was a hero of the Sandinista revolution against the Somoza dictatorship but then turned against his old compañeros to become a contra? Pastora, who always has time to explain to reporters that he is not only a military-political genius but also the most handsome man in Nicaragua, is still here, as lovably egomaniacal as ever. (If he is not absolutely the most handsome man in the country, he is nonetheless a very attractive one, having fathered 22 children by an indeterminate number of women.)

When the Nicaraguan electoral tribunal ruled him ineligible to run for president on a technicality, Pastora camped on the sidewalk outside its offices and staged a hunger strike. When I went over to interview him on his 30th day without food, I took along a photographer. No pictures until I put on my hat, Pastora insisted, taking several minutes to arrange his gleaming white sombrero just so. As he lovingly inspected the results in a hand mirror, he smiled and assured me, "Next to me, Errol Flynn looks like a piece of shit."

Whenever Nicaragua throws me a curveball—which it still does with disconcerting regularity after 16 years of covering it—I think of a story about Pastora from his contra days, when he fought with his putative allies at the CIA almost as much as his Sandinista enemies. The American spooks drove him half-mad. One day Pastora's aides sat silently by as he paced up and down, ranting and raving, for more than an hour. They couldn't figure out what the problem was. He kept screaming about the chairs, the damned chairs, the chairs would be the death of him. Chairs? Finally one of the men slapped his forehead in recognition. For *chair*, Pastora was using the Spanish word *taburete*. But a chair is also a *silla*. And *silla* is pronounced exactly like *CIA* in Spanish. Covering Nicaragua has been the only time in my life I've wondered if I shouldn't have taken more drugs in the '60s.

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Five Years Ago Discussing Reform of Drug Policy Was Taboo. Now Ending the Drug War Is Popular!

by Kevin B. Zeese

Over the past two years voters in seven states and the District of Columbia passed initiatives favoring medical marijuana or decriminalization of marijuana generally and treating drug offenses as a health issue rather than a law enforcement issue. Recently, a wide array of groups, including the NAACP, Volunteers of America, YWCA, the Evangelical Lutheran Church in America, the United Methodist Church and the Rainbow/PUSH Coalition, have called for a new approach to drug control.

There are at least three good reasons for revaluation of our current approaches:

Does Not Protect American Youth

Last year almost 10 percent of America's children between the ages of 12 and 17 used illegal drugs. That's nearly twice the 1992 percentage. Before graduating from high school, half will try an illegal drug.

Throughout the last two decades approximately 90 percent of high school students have said illegal drugs are easy for them to get-easier than beer.

Advocates for the current policy claim drug use has decreased since 1978. These claims are highly doubtful. 1) These figures come from a voluntary survey conducted by the federal government. Do we think people will be as honest about their drug use in the repressive 90s as they would have been in the more permissive 70s? 2) Certain key populations, among them prisoners, are not included in the survey. 3) Even according to this survey, last year, nearly 14 million Americans used illegal drugs. That's an increase of over 1.5 million drug users since the beginning of the Clinton Administration. 4) The health and social problems associated with drugs have worsened since 1978- overdose deaths and mentions of drugs in hospital emergency rooms are at record highs, while the spread of disease such as AIDS and hepatitis-C is rampant. These serious health problems are largely the result of prohibition which makes it impossible to know the purity of illegal drugs, discourages people from seeking prompt medical treatment for fear of incarceration, and often prohibits the sale of sterile syringes thereby spreading disease.

Americans recognize the drug war is not working: gangs and cartels are getting richer, adolescents have easy access to drugs, overdose deaths are at record highs. We are spending too much on a policy that doesn't work.

High Costs Without Results

At the Federal level the drug control budget has increased from $9 billion to $18 billion in less than a decade. Since Reagan-era nearly $200 billion has been spent on the drug war by the federal government. Nationally we spend approximately $50 billion annually on drug control.

Drugs are more potent and less expensive despite record arrests and incarceration of drug offenders. Since 1991, the price of pure heroin has dropped from over $3,000 per gram to $1,000 per gram, cocaine prices have dropped from $275 per gram to $94 per gram.

The economics of drug prohibition are undermining the economies and democratic institutions in foreign countries. The drug market is a $400 billion per year industry, equaling 8% of the world's trade according to the United Nations. The US Office of National Drug Control Policy estimates that $57 billion is spent annually on drugs in the US alone. Drug profits fuel insurgency movements, corrupt public officials and undermine the world's economy because prohibition turns plants into products more valuable than gold.

Cruel and Discriminatory Practices

Arrest and incarceration rates are at record highs. Over 1.5 million people are arrested each year for drug offenses, two-thirds for mere possession according to the FBI. Nationally, 1.8 million Americans are behind bars; 400,000 are incarcerated for drug offenses.

Only 11% of the nation's drug users are black; however, blacks constitute almost 37% of those arrested for drug violations, over 42% of those in federal prisons for drug violations, and almost 60% of those in state prisons for drug felonies.

What Can We Do?

We can be more effective if we are pragmatic, base our policy choices on the facts and are not afraid to face-up to the failure of current policy. Citizens need to get informed, get active and help end a very expensive and destructive policy. Future columns will discuss alternatives to the drug war. To learn more now, please visit www.csdp.org for alternative approaches, accurate information and connections to reform-minded organizations. And let us know how you or your organization can help spread the reform message.

Common Sense for Drug Policy, Kevin B. Zeese, President
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How intellectual property laws stifle popular culture

COPY CATFIGHT

On August 19, 1999, in Los Angeles, a mild act of censorship took place. Twentieth Century Fox, the colossus behind the cult series *Buffy the Vampire Slayer*, sent a letter to Alexander Thompson, a 35-year-old data processor and devoted *Buffy* fan. Thompson had spent countless hours transcribing each episode of the show, complete with descriptions of the scenery and action, and had posted the results on the World Wide Web, to his fellow fans' delight. Joss Whedon, the show's writer and producer, had praised Thompson for the job he'd done, even autographing one of the transcripts.

Whedon, however, did not own the copyright to his work. Fox did. And Fox, the company told Thompson, "has a legal responsibility...to prevent the unauthorized distribution of its proprietary material."

In other words, Thompson had to remove his transcripts from his Web site or face a lawsuit.

As far as repression goes, this no doubt sounds trivial. Fox is clearly being stupid—Thompson's transcripts were a resource for fans, not a substitute for the show—but the company was within its legal rights as the owner of the *Buffy* program. What it did was obnoxious, silly, and bad business, but it's hardly a threat to free speech. Right?

TOM COCOTOS

BY JESSE WALKER

LICENSED TO UNKNOWN
NO REPRODUCTION PERMITTED

Don't be too sure. There is an inherent conflict between intellectual property rights and freedom of speech, a tension between your right to control a story you've written and my right to use it as raw material for my own work. Thanks to two trends, that tension is turning rapidly into a collision—one where more than the convenience of online *Buffy* fans is at stake.

On one hand, as information has grown more valuable, copyright and trademark law has become increasingly restrictive. At the same time, there has been, in the words of MIT media studies professor Henry Jenkins, an "explosion of grassroots, participatory culture," a new high-tech folkway that not only draws on pop culture but appropriates from it more easily than ever before, and disseminates itself on a wider scale.

Now the companies atop the culture industry, from Fox to Disney to LucasFilm, are starting to notice this alternate universe of fans, parodists, and collagists. They don't quite understand what they're finding, and for the most part they don't like it. And they've got the government on their side.

In theory, a copyright is simply an incentive to create: Compose something original, the Constitution says, and we'll make sure you get a chance to profit from it. Trademark law is even simpler. It's a protection against fraud and consumer confusion, a recognition that Nike shoes are a particular product, and that if I start selling some homemade slippers as "Nikes," I am deceiving my customers.

Copyrights, unlike trademarks, have always posed problems, even if you think they're necessary. They are, after all, government-granted monopolies; as such, they should be strictly limited and carefully watched. If someone wants to extend their reach, he'd better have a compelling argument for doing so, and lawmakers should approach his proposal with due skepticism.

Instead, Congress acts as a rubber stamp for copyright holders, especially the big campaign donors in the entertainment industry. At the dawn of the republic, copyrights lasted for just 14 years and could be renewed for another 14. This period has been gradually extended, especially lately: It has been lengthened 11 times in the last 40 years, most recently by the Sonny Bono Copyright Term Extension Act of 1998.

Before the Bono Act, new or recent works copyrighted by individuals were protected for life plus 50 years. Afterward, protection lasted for life plus 70 years. Corporate-owned copyrights were also extended by two decades, to 95 years, as were all copyrights for works produced before 1978. The push for the new law was spearheaded by Disney, whose most famous character, Mickey Mouse, was scheduled to enter the public domain in 2004, with Pluto, Goofy, and the rest following shortly thereafter. Disney is notoriously jealous with its cartoon cast: In one of the most famous copyright cases of the '70s, it successfully halted sales of *Air Pirates Funnies*, a risqué underground comic by Dan O'Neill featuring the Disney characters, even though the comic was clearly a *Mad*-style parody.

The prospect that just anyone would be allowed to produce his own Mickey merchandise was evidently unthinkable at Disney HQ, and the company exploited its connections to get the copyright extension passed. The very day Senate Majority Leader Trent Lott became a co-sponsor of the bill, the Center for Responsive Politics reports, the Disney Political Action Committee donated $1,000 to his campaign chest; within a month, it had also sent $20,000 in soft money to the National Republican Senatorial Committee. And Disney had help: Other entertainment giants, from Time-Warner to the Motion Picture Association of America, joined the lobbying effort, as did some well-known songwriters, such as Bob Dylan, and heirs of dead songwriters, such as George and Ira Gershwin.

The irony was rich: Disney, which draws heavily on public-domain characters and stories in its own products (Aladdin, the Little Mermaid, Mulan), was fighting to keep the cultural commons closed. And Dylan regularly bases his work on the chord structures, and sometimes lyrics, of older folk songs—"The Girl from the North Country" on "Scarborough Fair," "I Dreamed I Saw St. Augustine" on "I Dreamed I Saw Joe Hill Last Night." Yet there he was, demanding royalties from his music until 70 years after his death.

Meanwhile, the Gershwin heirs, who didn't even write the songs that keep them wealthy today, found themselves essentially arguing that the 20-year extension would somehow be a further incentive to their dead ancestors' creativity, a claim that smacks of either spiritualism or desperation.

"It's a joke," declares David Post, a professor of law at Temple University. "It's a disgrace. There is no better example that I can imagine, literally, of Congress caving in to small, highly focused special interests. There is no conceivable public benefit from the additional 20 years. Zero." Copyrights don't bother Post, but retroactive extensions of them, which by definition cannot affect the original creator's incentives, do. "Congress was bought," he continues. "This was the sale of legislation in the crudest form. They should be ashamed."

The Bono Act's copyright extension is a "joke," declares David Post, a professor of law at Temple University. "There is no conceivable public benefit from the additional 20 years. Zero."

If the Bono bill's intended consequences are bad, its unintended effects are arguably worse. When it's unclear who owns a copyright—for an old B movie, say, or a cult writer's early short stories, or an ancient R&B record—that discourages companies from reissuing the work, even if there's considerable interest in reviving it. The potential legal hassle is simply too daunting.

Last October, the U.S. District Court for the District of Columbia rejected a suit alleging the Bono bill was unconstitutional;

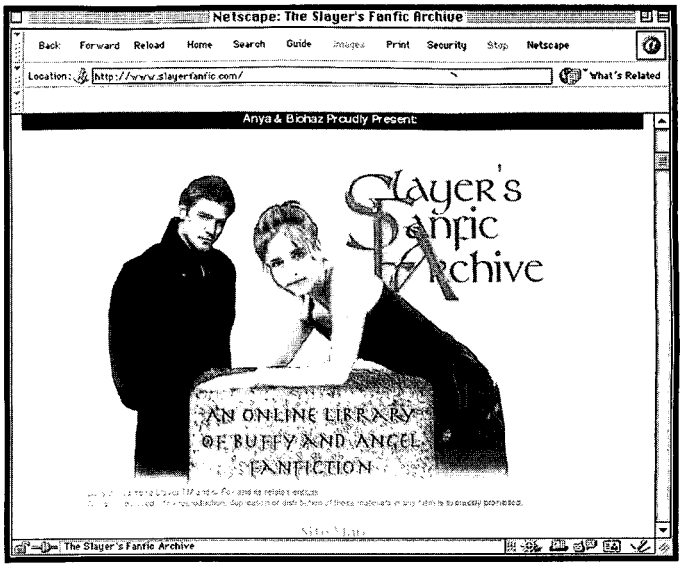
the plaintiffs have appealed the case, and it should be heard again by next August. One plaintiff, 56-year-old Eric Eldred of East Derry, New Hampshire, operates Eldritch Press, a popular Web site filled with digitized editions of old volumes, ranging from H.L. Mencken's *In Defense of Women* to books about boats. "I'm not interested in putting up works by Stephen King," he says. "I'm interested in books that are down a couple of tiers: books that are interesting, but that publishers don't find profitable to reprint." The new law threw some roadblocks in his way.

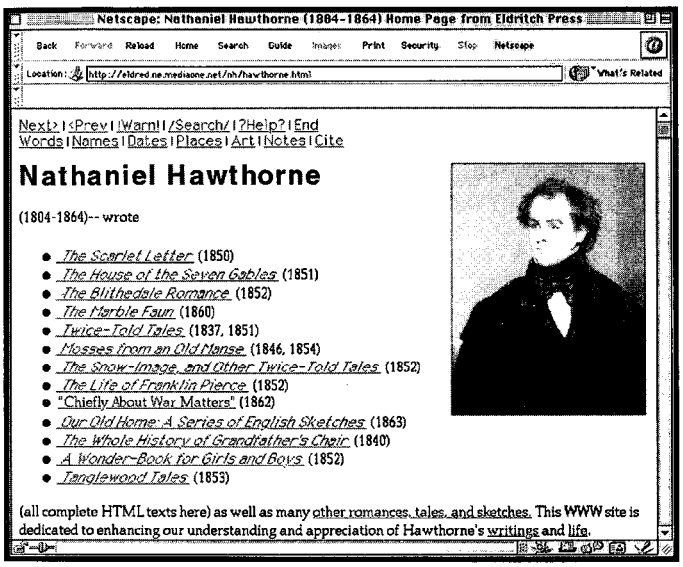
Consider *Horses and Men*, a 1923 collection of short stories by Sherwood Anderson. The book has long been out of print; the rights to it are owned by the Sherwood Anderson Trust, which makes money by putting out scholarly editions of Anderson's work. Many of the stories in *Horses and Men* will not be reprinted in any of their Anderson anthologies, and those that are will often have the punctuation "corrected" to reflect modern usage. Eldred would like to put the original book up on his Web site, so people can read the out-of-print tales and so they can compare Anderson's original punctuation to the new version. He expected the book to pass into the public domain in 1998, allowing him to do just that. But thanks to the Bono bill, the copyright won't expire for another 20 years.

And that's no aberration. Another 1923 book, Robert Frost's *New Hampshire*, has been out of print for more than 70 years; several of the poems have not been reprinted, and many of those which have been reprinted now include—this seems to be a theme—different punctuation marks. (It's also, Eldred notes, an attractive book in itself, with handsome woodcuts he'd like more people to see.) "Our real battle is not with the traditional publishers," Eldred explains. "It's not with people who want to make money publishing books. It's with people who want to lock up books."

A law that keeps old books out of the public domain does the same for old movies. One vocal opponent of the copyright extension is Sinister Video, a small company that specializes in reissuing old exploitation flicks. (See "Mail-Order Movie Madness!," April 1999.) "There are literally thousands of works, particularly in the area of motion pictures, that are sitting on the shelf waiting for the freedom of the public domain," the company noted in a statement. "The large companies that own the rights to them have no intention of ever making most of those works available again on a widespread basis." Thanks to the Bono Act, "Copyrights on all works will be extended so that the major companies can continue to exploit the small percentage of works that are still profitable to them—the rest be damned!" Damned indeed: In 20 years, a lot of those "protected" movies will have physically disintegrated. (For that reason, a film preservation group and a movie archive have joined Eldred's suit against the Bono law.)

For those who can't wait for those movies to enter the public domain, there is a loose distribution network that might satisfy them. But it exists in a gray area: not quite illegal, but always subject to the possibility that someone will decide a tape violates his copyright. For the most part, the videos are available only


Netscape: The Slayer's Fanfic Archive
Anya & Bishaz Proudly Present:
Slayer's Fanfic Archive
AN ONLINE LIBRARY OF BUFFY AND ANGEL FANFICTION


Netscape: Nathaniel Hawthorne (1804-1864) Home Page from Eldritch Press
Nathaniel Hawthorne
(1804-1864)-- wrote
The Scarlet Letter (1850)
The House of the Seven Gables (1851)
The Blithedale Romance (1852)
The Marble Faun (1860)
Twice-Told Tales (1837, 1851)
Mosses from an Old Manse (1846, 1854)
The Snow-Image, and Other Twice-Told Tales (1852)
The Life of Franklin Pierce (1852)
"Chiefly About War Matters" (1862)
Our Old Home: A Series of English Sketches (1863)
The Whole History of Grandfather's Chair (1840)
A Wonder-Book for Girls and Boys (1852)
Tanglewood Tales (1853)
(all complete HTML texts here) as well as many other romances, tales, and sketches. This WWW site is dedicated to enhancing our understanding and appreciation of Hawthorne's writings and life.

Public Domains: Web sites engage in everything from unauthorized commentary to archival recovery. (Above: a censored *Buffy* site and Eldritch Press' Hawthorne page.)

by mail order, though some specialty stores carry them as well.

One such store is Cinefile Video, a film buff's nirvana located next to Los Angeles' famous Nuart theater. Founded last May by four refugees from another video shop, Cinefile carries tapes that range from obscure industrial films to footage from Orson Welles' unfinished *Don Quixote*, from Italian horror-porn to classic Soviet silent cinema, from ancient TV specials to Grade Z movie trailers. "We'll buy anything that we find that we know you just can't find anywhere else," reports co-owner Hadrian Belove, "even if I don't particularly like it. There's a certain respect I have for the archival value of having such really weird tapes."

Most of the store's wares are regular copyrighted tapes, though many of them have gone out of print. Some have copyrights that have expired; others were never copyrighted; with others, no one's sure who owns the rights at all, and someone

decided to release the films anyway. Some are foreign movies that don't have official distributors in the United States, thus giving Americans the right to sell dubs of them on demand.

And then, Belove concludes, "There are certain companies that own things and purposefully don't release them, either because they think they're embarrassing or—who knows?—because of some vindictive streak." Disney, for example, will not allow anyone to sell or rent *Song of the South*, a 1946 film of Uncle Remus stories that is periodically damned for its alleged racism. It is indisputably illegal to carry those movies, and Cinefile will not stock them. Belove does have his own copies of several such tapes, however, and often personally lends them to his store's customers for free—thus moving the transaction out of the marketplace and out of the reach of the company lawyers.

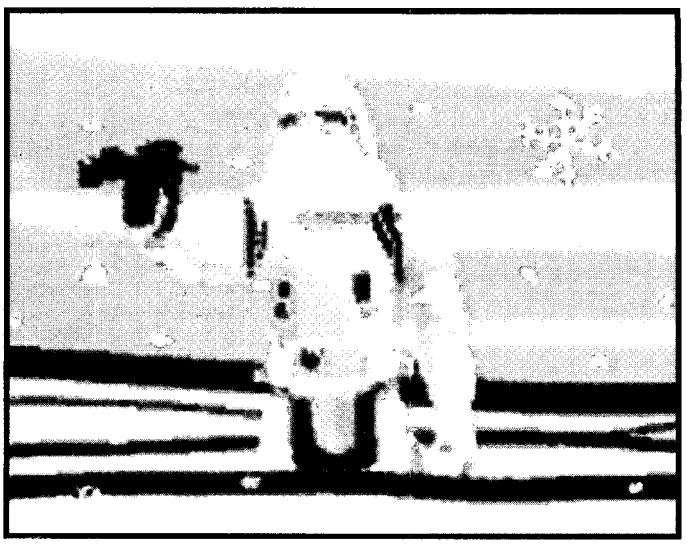
Song of the South, of course, would be covered by a copyright whether or not the Bono bill was in effect. Disney's efforts to suppress it indicate that the trouble with intellectual property laws goes deeper than the length of time a work can be monopolized. It can erode free speech to monopolize a work at all.

The most dangerous thing about restrictive copyright laws isn't what they do to old works. It's what they do to new ones. Copyright has traditionally been tempered by the doctrine of "fair use," which allows a limited amount of appropriation for the purpose of parody or criticism. (That is why book critics, for example, do not have to get permission to quote the texts they are reviewing.) Fair use is not dead: In the 1994 case *Campbell v. Acuff-Rose Music, Inc.*, the Supreme Court ruled unanimously that the rap group 2 Live Crew had the right to parody the old Roy Orbison hit "Oh, Pretty Woman," declaring that "a parody's commercial character is only one use to be weighed in a fair use enquiry," and that the new record was clearly "commenting on the original or criticizing it, to some degree."

Unfortunately, the courts have not been consistent friends of fair use. Two years after the *Campbell* decision, for instance, Dr. Seuss Enterprises successfully convinced a federal district court to issue an injunction against *The Cat NOT in the Hat!*, an O.J.-oriented parody by "Dr. Juice." Splitting every hair in sight, the court ruled that the parody defense applied only when there was "a discernible direct comment on the original." And Dr. Juice's book, the court ruled, was lampooning the Simpson case, not *The Cat in the Hat*; Seuss' story merely provided a narrative framework. The U.S. Court of Appeals for the 9th Circuit agreed: "While Simpson is depicted 13 times in the Cat's distinctively scrunched and somewhat shabby red and white stovepipe hat," it ruled, "the substance and content of *The Cat in the Hat* is not conjured up by the focus on the Brown-Goldman murders or the O.J. Simpson trial." Therefore, the book was bannable.

Nor is fair use consistently protected for the purpose of criticism. There is a long tradition of letting critics and scholars quote passages from books. There is much less precedent for quoting, say, a 30-second excerpt from a movie on a CD-ROM, or 10 seconds of a song in an online journal, partly because CD-ROMs and Web sites have not been around that long and partly because the courts seem to regard sounds and images as somehow different from text. The editors of one recent critical collection, *The Many Lives of the Batman*, discovered that they could not freely quote images from comic books, a tricky problem if one wants to make an argument about the placement of words or images within a panel or the relation of one panel to another. "If you can't quote what you're talking about," comments MIT's Jenkins, a contributor to the Batman anthology, "then at a certain point it becomes impossible to talk about it at all. You cut off certain ideas from being heard."

One of the most common sparks for a copyright fight is the practice of sampling, in which parts of older records are spliced and recycled in newer tunes. In 1991, for instance, the long-forgotten '70s pop star Gilbert O'Sullivan, discovering that rapper Biz Markie had appropriated three words from his song "Alone Again (Naturally)," successfully sued, not for a share of the



Flattery or Infringement?: *Star Wars* is among the most "quoted" series in fan-generated art. (Above: stills from *Kung Fu Kenobi* and *MacBeth Episode 5*.)

royalties, but to suppress Biz Markie's record altogether.

These days the issue extends far beyond music. "We now live in a culture that is based on sampling," Jenkins argues, "with new means of poaching and redoctoring images. It's a new aesthetic." Where samizdat artists once had to make do with photocopiers and audio cassettes, they now can use videotapes, camcorders, Photoshop, digital film editing, recordable CDs, MP3 files, and the Internet. The result has been an explosion of amateur films, fiction, and music, all of which can be "published" for a minimal investment by putting them on the Web.

The most active amateurs are probably the members of various fan subcultures. I own, for example, a CD called *Do It Again: The Kover Kontroversy Kontinues*, a collection of songs composed by the British rock band the Kinks and performed by members of an Internet fan group, the Kinks Preservation Society. The contributors live everywhere from Holland to Hawaii to Brazil; some recorded straightforward remakes, while others reworked the songs in interesting ways—translating the lyrics into Portuguese, say, or adding a reggae rhythm, or splicing in a verse from the folk standard "Wayfaring Stranger." The performers never bothered to get the rights to the songs, figuring that wouldn't be necessary for a communal, noncommercial, low-circulation project. Legally speaking, that isn't necessarily so. Fortunately, the band doesn't seem to mind, recognizing the project as an informal tribute, not a commercial competitor. ("I personally gave Dave [Davies, the band's guitarist] a copy of the CD," reports Paul Wykes, who organized the project, "and he seemed thrilled by it.")

"If something becomes an essential part of our culture, we have a right to draw on it and make stories about it," says MIT's Henry Jenkins. "The core question is whether First Amendment protections include a right to participate in our culture."

Not every copyright owner is so tolerant. Devotees of *Star Trek*, *Star Wars*, and the like have long produced their own fiction set in their favorite show's or movie's universe. In the last decade, this genre of writing has moved almost entirely out of the realm of small presses and zines and onto the Internet—where, being much more visible, it is also much more vulnerable to a copyright infringement challenge. This is a particular problem for fan filmmakers, a once-tiny group that has grown tremendously now that they can use relatively cheap camcorders, editing software, and computer animation instead of low-tech, silent Super 8 film—and now that their work can be viewed not just in living rooms and at science fiction conventions but on any computer screen hooked to the World Wide Web.

Thus, a Web surfer with the right software—most of it available for free—can download an astonishing array of homemade epics, varying widely in tone and quality:

■ *Star Wars: The Remake* is a mimetic recreation of the first *Star Wars* film, compressed into 15 soundless minutes. Made in 1980, this specimen from an earlier generation of fan filmmaking will be utterly incoherent to viewers who have not seen the original movie, and will be rather impressive, in an odd way, to viewers who have.

■ *Kung Fu Kenobi's Big Adventure* is a seven-and-a-half-minute short by one Evan Mather, with musical and visual allusions to everything from *Mission: Impossible* to *A Charlie Brown Christmas*. Performed by *Star Wars* action figures against a computer-generated animated background, this film is 50 times as inventive as *The Phantom Menace* and about 100 times as entertaining. My favorite scene: a recreation of the Jedi Council meeting in *Menace*, on a set made out of Legos. The Jedi knight played by Samuel Jackson rises and delivers a speech, sampled directly from a rather different film starring Jackson, *Pulp Fiction*:

"Blessed is he who, in the name of charity and good will, shepherds the weak through the valley of darkness, for he is *truly* his brother's keeper. And I will strike down upon thee with *great* vengeance and *furious* anger—"

Yoda interrupts: "*Anger* leads to *hate*."

Kung Fu Kenobi violates more copyrights than I could count. All the dialogue is taken directly from the soundtracks of other films. All the characters are lifted from other films, too. And I doubt Mather paid any licensing fees for the music. But it's an original work in itself, a funny movie that appeals even to ogres like me who don't care much for *Star Wars*. Mather has made several other pictures, each of them built, in different ways, on pop culture allusions; his latest is titled *Buena Vista Fight Club*.

■ *Star Wars: A Newfangled Hope* is too big to put on the Web, but individual sites have screened it as a streaming video at preadvertised times. It consists of the first *Star Wars* film in its entirety, with a new soundtrack dubbed over the old one. I haven't seen it, but according to the Mos Eisley Multiplex, an online guide to *Star Wars* fan cinema, it presents a world in which "Ben Kenobi's a hairdresser, Luke is one horny dope, Threpio endlessly sings showtunes and Darth has a major high-school crush on Leia."

Redubbing—an honored comic technique ever since Woody Allen turned a Hong Kong spy flick into *What's Up, Tiger Lily?*, if not earlier—is a favorite method among fan directors. The most common target appears to be the *Phantom Menace* trailer, which exists online in countless guises.

■ *Macbeth Episode 5: MacDuff Strikes Back*, an English project by some New Jersey high school students, is a 17-minute featurette reminiscent of the cult video *Green Eggs and Hamlet*. By any rational standard, it is a bad movie: It fuses *Macbeth* and the *Star Wars* films rather haphazardly, it's sometimes impossible to make out what the actors are saying, and the filmmakers didn't bother concealing the fact that they were

On the Web

- **The Slayer FanFic Archive** (online *Buffy* fandom): www.slayerfanfic.com
- **Eldritch Press:** eldred.ne.mediaone.net
- ***Do It Again: The Kover Kontroversy Kontinues*:** kinks.it.rit.edu/cgi-bin/MusicSearch.cgi?album=related/album-doitagain
- **Mos Eisley Multiplex** (*Star Wars* fan film links): www.jitterbug.com/starwars/index.html
- ***Star Wars: The Remake*:** home.earthlink.net/~jimjongsma/StarWarsRemake/Page001.html
- ***Macbeth Episode 5: MacDuff Strikes Back*:** www.glenridge.org/macbeth/mainpage.htm
- **Evan Mather's movies:** www.jedinet.com/cinema

shooting inside a school.

But it would take a cold-hearted snob indeed not to appreciate this movie, or at least the spirit behind it. There's a message on the directors' Web site, a few sentences that sum up the spirit of the micro-moviemaking movement: "If you have a video camera lying around, and better yet some editing equipment (pretty cheap for computers nowadays), go experiment. Be your own director. Go Hollywood...use a skateboard for dolly shots, or a fishing rod for special effects. It's fun..."

That is, ultimately, the best argument for letting movies like this exist. It's not just that there's a sizable subculture that wants to watch them, and it's not just that sometimes a director like Evan Mather will make something so fun that even nonfans will enjoy the results. These movies are a first rung in the art of filmmaking, a chance for budding actors, writers, and directors to learn the rudiments of their craft. If those young auteurs want to adopt bits of the *Star Wars* mythos in their films, well, why shouldn't they? *Star Wars* is a part of our culture; it's a shared experience. And as Jenkins points out, "If something becomes an essential part of our culture, we have a right to draw on it and make stories about it....The core question is whether First Amendment protections include a right to participate in our culture." And not just to participate, but to criticize: A law that prohibits a *Star Trek* devotee's homages to his favorite show also restricts a *Star Trek* hater's right to parody the program's militarism, its view of sex roles, or its vision of the future.

There's a common-sense issue here, too. It is legal, after all, to write or improvise one's own *Star Wars* adventures using action figures; that is, indeed, what the toys are for. It is legal to record those playlets on film or video; this is known as "making a home movie." Shouldn't it be legal to show those home movies to anyone you please? Especially if it's all done on a nonprofit, amateur basis, with no threat of direct, head-to-head competition with the official *Star Wars* pictures?

LucasFilm has taken an inconsistent approach to its online imitators. Some fan films—such as Kevin Rubio's *Troops*, a *Cops*-inspired parody I have not seen—have received Lucas' warm praise. Others, such as the Australian-made *The Dark Redemption*, have received letters from lawyers telling them to shut down their sites, or else.

If copyrights have grown more restrictive over the years, trademarks have been transformed even more radically. Once restricted to preventing customer confusion and protecting businesses' reputations, they are increasingly treated as property that no one may appropriate at all. In 1996, for example, the New York Racing Authority sued Jeness Cortez, a painter whose work often depicted the Saratoga Race Course and, thus, various Racing Authority trademarks.

In that case, the courts upheld Cortez's First Amendment rights. In other cases, artists have not been so lucky. In one infamous incident, the Rock and Roll Hall of Fame successfully sued photographer Chuck Gentile over a poster depicting its museum at dusk. The Hall of Fame not only alleged that the poster's title—"The Rock and Roll Hall of Fame and Museum in Cleveland"—violated one of its trademarks; it claimed that *the building's design itself* was a protected mark, thus in essence claiming a property right in the way part of the Cleveland skyline looks. The U.S. District Court for Northern Ohio sided with the museum and issued an injunction against Gentile's poster. The U.S. Court of Appeals for the 6th Circuit later tossed out the injunction, but the museum is still pushing its case in the district court.

In part, this shift reflects the increased popularity of "dilution" laws over the last several decades, culminating with the Federal Trademark Dilution Act of 1995. Under this rule, it is illegal to produce, say, Microsoft brand ramen noodles, even though that other Microsoft isn't in the noodle business, lest the lousiness of your pasta undermine the software company's reputation. When dealing with a famous mark, such as Microsoft, the dilution doctrine makes some sense: There is, after all, a reasonable argument that commercial misrepresentation is afoot. The courts have stretched the doctrine out of shape, however, applying it with little regard for whether the trademark in question is famous enough for "dilution" to be a possibility.

Furthermore, the very definition of trademark has been expanding for the last 10 years. Writing in the *Yale Law Journal*, Mark Lemley of the University of Texas notes that "companies have successfully claimed trademark rights in the décor of their restaurant, the 'artistic style' in which they paint, the design of their golf course, the shape of their faucet handle, the diamond shape of a lollipop, the 'unique' registration process of their toy fair, the shape of their mixer, and the design of their personal organizers." At some point, this stops being anything more than a way to club your competition.

The fiercest trademark battles, though, involve words, not images. As e-commerce sweeps the Internet, domain names—those ugly streams of letters that end with "org" or "net" or "com"—have become more valuable, and some companies have become upset over URLs that bear too great a resemblance to theirs. Many of the resulting conflicts don't even make it to court: The very threat of legal action is enough to cow the alleged transgressor into dropping its address, even if he'd probably prevail before a judge. "A lot of this is just bullying," comments Temple University's David Post. "A lot of these claims are totally spurious." But the simple cost of defending themselves is often too much for those on the receiving end of a legal threat. The plaintiffs in such suits tend to have more money and lawyers at their disposal.

Besides, given the vagaries of the justice system, the defendant just might lose. Late in 1999, a judge ordered etoy.com, a Web site run by some European performance artists, to take down its site or pay a fine of $10,000 a day. Its URL, the court ruled, violated the trademark held by the online retailer eToys.com—even though etoy had been around since 1994, well before eToys existed. If the older site is finally saved, its rescuer will probably be public opinion, not the common sense of a judge or jury. Two weeks after the injunction, eToys suggested that it may voluntarily withdraw its suit, its reputation battered by constant protest on the Internet. (At press time, the case is not yet closed.)

Now Congress has gotten involved, passing the infamous "cybersquatting" law in late 1999. Cybersquatting is the practice of registering someone else's trademark (or a famous person's name) as a domain name, usually in hopes of selling the domain to the trademark holder later. The new law prohibits such speculation, imposing fines of up to $100,000 and, in the process, undermining the adjudication process already hammered out by the members of the International Corporation for Assigned Names and Numbers, a.k.a. ICANN. Civil libertarians worry that it will also intrude on our right to use trademarks in real sites' addresses—that if I devote a site to criticizing Shell Oil and call it www.shelloil.org, or even www.shelloilstinks.org, I may be breaking the new law.

While it would be a good idea to repeal the cybersquatting and dilution laws, one could probably avoid even more trademark battles with more prosaic measures. Post suggests expanding the range of domain names: If eToys.com could have called itself eToys.toys, he argues, the problem might never have emerged in the first place. There is also, he adds, a case for adopting the so-called "English system," in which a lawsuit's loser pays the winner's legal costs. Such an arrangement poses some problems of its own, but it would clearly discourage frivolous, bullying suits.

For centuries, our popular myths have enshrined the "romantic" or "heroic" author, conjuring new books out of nothing but his solitary genius. This image is popular with nonwriters, because many of them do not know how writing is done, and it is popular with writers, because it flatters us. It is, however, untrue. Every book, film, and song in the world draws on an existing cultural commons. Creativity rarely, if ever, means inventing something out of nothing. It means taking the scraps and shards of culture that surround us and recombining them into something new.

When the government tells us we can't use those scraps without permission from Disney, Fox, or the Sherwood Anderson Trust, it constrains our creativity, our communications, and our art. It tells us that we cannot draw on pop songs the way we once drew on folk songs, or on TV comedy the way we once drew on vaudeville; it says we cannot pluck pieces from *Star Wars* the way George Lucas plucked pieces from foreign films and ancient legends. The consequences are staggering. Imagine what would have happened if, 100 years ago, it had been possible to copyright a blues riff. Jazz, rock, and country music simply could not have evolved if their constituent parts had been subject to the same restraints now borne by techno and hip hop.

Few would argue that artists shouldn't be able to make a living from their work, or that customer confusion is a good thing. But we've stood those ideas on their heads. Rather than promoting enterprise and speech, copyrights and trademarks often restrain them, turning intellectual property law into, in Jenkins' words, "protectionism for the culture industry."

Fortunately, the state simply isn't big enough to enforce every intellectual deed on the books. You can still find Alexander Thompson's *Buffy* transcripts on the Web, even though he's taken them down: Several fellow fans had already downloaded them and posted them to sites of their own. Copies of *The Dark Redemption* are still floating around—if the movie itself isn't online, people willing to sell you tapes are. Even *The Cat NOT in the Hat!* persists, not as a book but as a frequently forwarded e-mail. The overzealous enforcement of copyrights and trademarks may chill speech, but it won't kill it.

Rather than promoting enterprise and speech, copyrights and trademarks often restrain them, turning intellectual property law into "protectionism for the culture industry."

But the chilling is bad enough. Americans are not mere passive consumers, dully absorbing images invented in distant corporate laboratories. We hatch our own ideas and compose our own stories, drawing on pop culture without absorbing it blindly. We should look with disfavor on any law that tells us to shut up and get back on the couch.

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Kick Me, I'm For Free Trade

With the WTO under siege, free-traders need a new strategy.

By Brink Lindsey

For those of you who didn't get your fill of World Trade Organization bashing from the demonstrators in Seattle, you can look forward to more of the same this spring—this time in the other Washington. In all likelihood Congress will soon be voting on whether the United States should remain a member of the trade body.

When the United States entered the WTO back in 1995 at the close of the Uruguay Round of trade talks, a time bomb was slipped into the implementing legislation. Section 125 of the Uruguay Round Agreements Act allows any member of Congress to propose a joint resolution this year to withdraw authorization for U.S. membership in the WTO. Such a resolution would then be considered under special, expedited procedures. While there's almost no chance that the measure could really be enacted into law, it's conceivable that the House of Representatives might pass it. For that to occur would deal another serious blow to the WTO's already battered prestige.

The sad fact is that, in this country at least, the WTO has become a giant, flashing "Kick Me" sign affixed to the free trade cause. In light of that fact, it's worth remembering why creating the WTO ever made sense. It wasn't because of any mercantilist nonsense about "fair trade." As any Economics 101 textbook will tell you, we benefit from opening our own markets regardless of what other countries do. And it certainly wasn't because of any woolly-headed notion that a world economy needs a world government. That's the last thing it needs.

No, the only good reason for having a body like the WTO is to make it politically easier for our own government, and for governments abroad, to reduce restrictions on trade and investment flows. International trade agreements facilitate liberalization by adding the sugar of improved market access abroad to the political medicine of increased exposure to foreign competition at home. As a result, exporting interests eager to penetrate foreign markets are induced to lobby for the free trade cause. And once barriers have fallen, it's harder to backtrack toward renewed protectionism when doing so violates an international obligation. To cite just one recent example, Congress last year voted down import quotas on foreign steel in large part because of an unwillingness to flout the WTO's ban on such restrictions.

Rough Sailing: If free-traders don't change course and begin arguing that free trade *at home* is a good idea, the WTO's usefulness will be undermined.

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But if the WTO is supposed to reduce and deflect protectionist pressures, it clearly isn't working. On the contrary, it is galvanizing what would otherwise be vague and unfocused anxiety about globalization into an energetic and potent political movement. While the protesters in Seattle may not represent mainstream American public opinion, any cause that can get tens of thousands of people into the streets can't be dismissed lightly. The fact is that the WTO has boomeranged on free-traders.

The fault does not lie with the WTO. In the five years of its existence, it has served as a forum for important new agreements on information technology, telecommunications, and financial services. And its dispute settlement mechanism has performed remarkably well; it has lent a credibility to market-opening rules that never existed in the old days of the toothless GATT.

But the WTO needs help. And the supporters of trade liberalization, in politics and in business, have failed to give it. They have failed to create the domestic political conditions that are necessary if the WTO is to operate effectively. In fact, they have actively contributed to a political culture in which the WTO is a natural whipping boy. Free-traders, through a botched political strategy, have turned what should be an asset into a serious liability.

Here's the nub of the problem. The pro-trade camp in this country has tried to sell free trade generally, and the WTO in particular, on the grounds that free trade

in *other countries* is a good idea. When other countries drop their trade barriers, American companies export more, and consequently create more export-related jobs. All true enough, but what free-traders fail to talk about—and their silence is deafening—is that free trade *here at home* is a good idea. It's widely believed among free-traders that talking about open U.S. markets amounts to leading with your chin, and so the less said on that subject, the better. (See "Fast-Track Impasse," February 1999.)

But by defending free trade entirely on the basis of what other countries do, supporters of open markets set themselves up for a fall. The fact is that the United States is much more open than most countries around the world—which is a strength, not a weakness. If, however, the WTO is to be justified solely on the benefits of opening markets abroad, then it always looks like we've gotten the short end of the stick. When the benefits of our own open markets are ignored, the argument that we are giving up our rights to faceless bureaucrats in Geneva begins to look plausible.

Meanwhile, by remaining silent in the face of anti-trade claims about job losses and a "race to the bottom," free-traders allow misplaced fears about globalization to spread by default. Trumpeting the prospect of increased exports by U.S. multinationals simply isn't responsive to those fears; indeed, it actually plays to suspicions that the WTO is a front for big corporations that seek to profit at the expense of ordinary Americans.

Over the past couple of decades, the U.S. economy has experienced a sharp surge in the intensity of competition. Much of this surge has had nothing to do with globalization. Deregulation, disinflation, and the revolution in information and communications technologies have all contributed. But our increasing economic ties with the rest of the world have been a significant factor. And while the increase in competition—from both domestic and foreign quarters—has been highly beneficial, it has also raised a lot of people's blood pressure. As a result, Americans are highly susceptible to demagoguery pinning the blame for all the recent tumult on foreigners—and in particular, on an obscure little bureaucracy like the WTO.

If the WTO is to facilitate trade liberalization rather than complicate it, an overhaul in political strategy is needed. In addition to their existing arguments, free-traders will have to make abundantly clear that open markets here at home serve the American national economic interest, even when other countries pursue less enlightened policies. Along those lines, they will have to argue, forthrightly and unapologetically, that a major benefit of WTO membership is the assistance it lends to reducing and holding down U.S. trade barriers against foreign competition. And then U.S. trade policy makers will actually have to walk the walk—they'll have to put American protectionist policies on the negotiating table, not defend them as though antidumping laws and textile quotas and tariffs were the crown jewels (as the Clinton administration did in Seattle).

If this about-face is made, free-traders will be in a strong position to respond to the WTO bashers. The WTO is being lambasted for its inattention to human rights, labor conditions, and environmental standards in developing countries. But once it is clear that our primary reason for joining the WTO is to open our own markets and keep them open, why on earth would we want to invent new reasons for closing them? We shouldn't rob ourselves of the benefits of openness simply because other countries are poorer or more poorly governed than ours. And as to the argument that trade sanctions are needed to help people in poor countries, how exactly do we help them by crushing their livelihoods? Burning the village in order to save it went out of fashion in Vietnam.

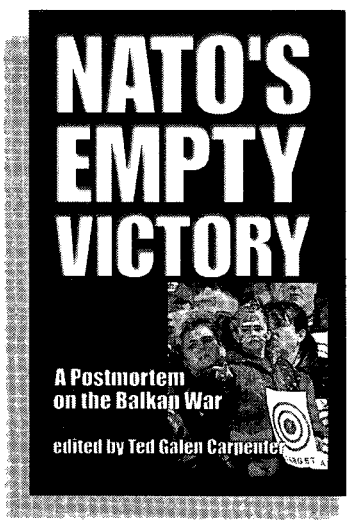
If free-traders don't change course, though, the WTO's usefulness will be seriously undermined—and perhaps even extinguished. Trade negotiations, rather than a pragmatic tool for speeding up liberalization, will become a quagmire of proliferating excuses for retarding and reversing it. If that happens, free-traders will have only themselves to blame.

Contributing Editor Brink Lindsey (blindsey@cato.org) is the director of the Center for Trade Policy Studies at the Cato Institute.

AT WHAT COST?

A POSTMORTEM ON THE BALKAN WAR

The Clinton administration boasts that the NATO alliance won a great victory in its war against Yugoslavia. Yet the war lasted far longer than NATO leaders anticipated, triggered a horrific refugee crisis among the Albanian Kosovars, and has left us with a long-term peacekeeping mission. Ten foreign policy experts examine how NATO blundered into this conflict, document its negative consequences, and offer proposals for preventing NATO's "victory" from becoming an even bigger fiasco.



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Weapons Modernization

How the Clinton administration is expanding its power before it leaves town.

By Michael W. Lynch

The Clintonites are good. One might think that, saddled with a Republican Congress, a presidential pronouncement that "the era of big government is over," and the aftermath of a distracting impeachment and trial, even the most bullish advocate of government would leave the mess behind and move on. Not so with Clinton's folks: They are as active than ever.

Committed to the idea that federal power can transform America into what they think is a better, more just place, these appointees see the waning administration as an excellent opportunity to expand state power. This is the hour to consolidate gains, and to translate the extreme views of temporary bureaucrats into lasting policy.

Take, for example, the sudden expansion of Title IX of the Education Amendments of 1972. On October 29, Clinton's civil rights crew at the Department of Justice published a little-noticed proposed rule in the *Federal Register* that would greatly extend the government's reach under this law.

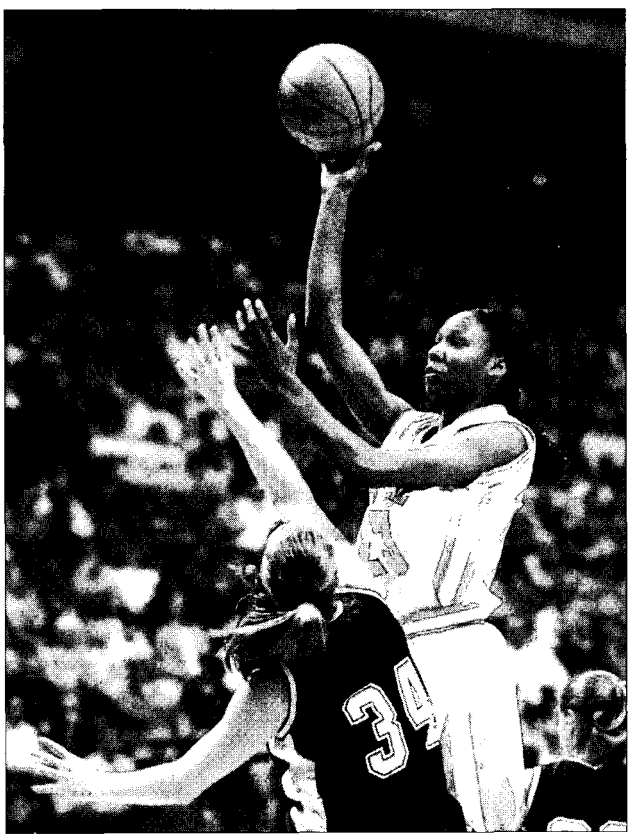
Like most laws, Title IX is vague. Its operative clause states: "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." President Ford's Department of Health, Education, and Welfare issued regulations interpreting the law in 1975. Four years later, Jimmy Carter's HEW handed down an interpretation for nondiscrimination in athletics, the now infamous three-prong test. To prove it's not discriminating against women, an institution must show one of the following: It meets the athletic needs of its female students; it is expanding to meet those needs; or its female and male students participate in athletics in percentages roughly proportionate to those of their respective enrollments.

In practice, proportionality provides the only "safe harbor" for schools that wish to avoid costly investigations or litigation. And *proportionality* is just a fancy synonym for *quota*, as Rep. Maxine Waters (D-Calif.) took some pleasure in reminding her colleagues on the House Constitution Subcommittee in June 1997. "It's the biggest quota you've ever seen," Waters said with glee during a hearing. "It is 50/50. It is a quota—[a] big, round quota."

This quota applies to both athletes and scholarship money. Since women choose to participate in sports at lower rates than men do, and since athletic budgets are limited, many schools are unable to meet their quota without cutting men's teams. From 1992 to 1997, more than 200 men's teams were cut, locking more than 20,000 male athletes out of college locker rooms. Over the same period, according to the Independent Women's Forum, institutions of higher learning added 5,800 female athletes to their rosters. (See "Title IX from Outer Space," February 1998, and "Manly Pursuits," November 1999.)

As nasty as it has proven in the 1990s, Title IX up until now has affected only those educational institutions that receive federal aid. The Clinton administration wants to expand it to cover any institution, public or private, that receives federal money and 1) conducts educational programs or 2) contracts with educational institutions to provide noneducational services. Included in this dragnet are not only an alphabet soup of 25 federal agencies and departments but also private companies that provide America's students with a variety of services. "A forestry workshop run by a state park receiving funds from the Department of Interior," the *Federal Register* informs readers, will be covered by Title IX. So too will "vocational training for inmates in prisons" and "a lecture series on the history of dance at a local school of ballet," if either the prison or the school gets a dime of federal money.

Under the rationale of ensur-



Parting Shot: As the clock runs down on the Clinton administration, its bureaucrats are working to expand Title IX coverage into new areas.

AP/ WIDE WORLD PHOTO

ing against sex discrimination, the Clinton administration is granting federal bureaucracies the power to regulate any company, agency, or government that engages in education-related activities and receives federal funds. This expansion also means more lawsuits. Unlike other nondiscrimination laws, Title IX gives third parties with no direct interest in the alleged discrimination (e.g., feminist advocacy groups, such as the National Women's Law Center and National Organization for Women) the right to file a complaint against any school. If they can find a plaintiff, they can march directly to court, where compensatory and punitive damages are available. These damages, along with attorney fees, underwrite future meddling. Lisa Tietig, an attorney suing a high school under Title IX, was blunt when *20/20*'s John Stossel asked if she was requesting up to four times her actual costs in fees. "Right," she replied. "We put that money into other lawsuits."

The Clinton administration characterizes the change as a minor extension of existing law, one that doesn't require Congress to amend the statute or even hold hearings. According to the administration, the changes are so trivial that federal agencies don't even have to bother with the usual cost-benefit analysis. Of course, if the proposed change were that trivial, the entire exercise would be redundant.

Doing an end run around Congress (and thus around the Constitution), and even around full administrative review, has been common in the Clinton administration, where disregard for the rule of law starts at the top.

In 1995, Clinton issued an executive order prohibiting companies from hiring replacements for striking workers—a policy that a Democratic-controlled Congress considered and rejected on four separate occasions. A federal court quickly struck it down. That same year, Clinton met congressional opposition to the bailout of Mexico with a plan to lend the money administratively.

Similarly, Interior Secretary Bruce M. Babbitt, after running into congressional resistance to increased grazing fees, figured out he could achieve the same goal—reduce the number of cattle ranched on federal land—"administratively." When ranching leases come up for renewal, the Bureau of Land Management cuts the cattle allotment by up to 85 percent.

Babbitt also ran into trouble reforming the Mining Act of 1872 to limit mining. No problem. Last year his department just reinterpreted the law to impose a five-acre limit on storage sites for excess rock and dirt removed from mines. According to a *National Journal* report chronicling the success of Clinton's cabinet, that could "essentially end open-pit mining in the West."

"When I got to town, what I didn't know was that we didn't need any more legislation," Babbitt told *National Journal*'s Carl M. Cannon, adding, "We've switched the rules of the game. We're not trying to do anything legislatively."

Why bother? It's easier to change the law without going through Congress. Clinton has used presidential proclama-

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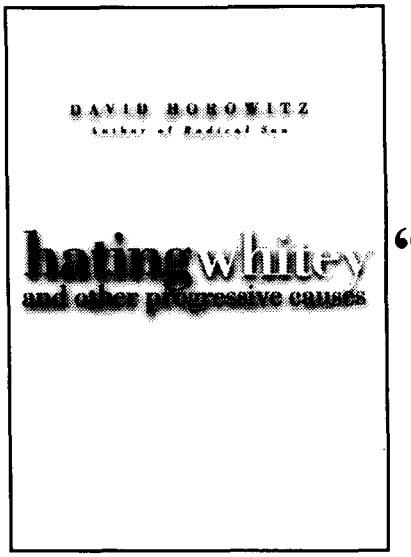

"Indignant Sanity"

"Horowitz is as much despised among [racial intellectuals] as Whittaker Chambers was at Georgetown dinner parties during the Alger Hiss case years ago. Among racial intellectuals, Horowitz is "Not Our Class, Dear." *Hating Whitey*—with its inflammatory title—deserves a reading. Horowitz is angry and polemical, but he is also a clear and ruthless thinker. What he says has an indignant sanity about it. For cautionary perspective in an argument like this, it pays to remember that Hiss was guilty and Chambers was right."
—*TIME* Magazine 9/22/99

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tions—and more than 300 executive orders—to achieve much that couldn't make it through Congress. He's been particularly active circumventing Congress in the environmental area. Just prior to the 1996 presidential election, Clinton issued a proclamation creating the Grand Staircase–Escalante National Monument on 1.7 million acres in Utah. A year later, he issued an executive order to create his American Heritage Rivers Initiative, which wasn't likely to pass Congress but is likely to put federal bureaucrats in charge of millions of acres of private land.

His underlings were quick studies. Environmental Protection Agency head Carol Browner, faced with a hostile Congress, figured she'd update the environmental laws administratively—that is, through regulations. She handed down a set of strict clean-air regulations in 1997.

Writes *National Journal*'s Cannon: "Browner—also without the benefit of authorizing legislation—has streamlined the procedures for cleaning up the abandoned inner-city industrial sites known as 'brownfields'; nearly doubled the list of chemicals whose release into the atmosphere companies must disclose publicly, under the EPA's 'right-to-know' regulations; and, under a directive from Al Gore, teamed up with the USDA to write a blueprint for water cleanup that is nothing short of an administrative rewrite of the Clean Water Act." Bragged Browner, "We completely understand all of the executive tools that are available to us. And, boy, do we use them."

Congress is not without fault. If members had the will, they could hold hearings and stop much administrative legislating. Says Michael Greve, executive director of the Center for Individual Rights, a public interest law group, "If they wanted to stop it, they could." But the fight can be tough. Rep. David McIntosh (R-Ind.), chairman of the House Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs, has been trying to get the EPA to refrain from implementing sections of the still unratified global warming accords drawn up in Kyoto. McIntosh can't find authorization in the Clean Air Act to regulate carbon dioxide. The EPA insists the authority is there, if only in spirit.

"The Clean Air Act is not a regulatory blank check," says McIntosh. "EPA is claiming a power Congress has not delegated for the apparent purpose of implementing a treaty the Senate has not ratified. I am determined to block any such usurpation of legislative power."

Ultimately, a federal court may have to decide. Courts have not been a friend to Clinton's EPA. It has lost two-thirds of the 65 cases brought against it in the U.S. Court of Appeals in the District of Columbia, according to a soon-to-be-released report by the Reason Public Policy Institute.

The end is near, however, and before the Clinton's appointees leave office they need to consolidate their gains. While in power, a bureaucrat can achieve much with what is known as "sub-regulatory guidance." Through an unrecorded phone call, or a letter that doesn't need approval from the central office and therefore isn't "official policy," a bureaucrat advises a recipient of federal funds how things ought to be done. And since the bureaucrat is the liaison to those higher-ups who control federal money, those "unofficial opinions" are taken seriously.

The Occupational Safety and Health Administration's recent "letter of interpretation" informing a Texas company that it was responsible for conditions and accidents in its employees' home offices is an example of sub-regulatory guidance. OSHA bureaucrats spent two years drafting the letter, which at some point would have been applied to other companies and perhaps even used in court. Yet when the contents wound up on the front page of *The Washington Post*, it took less than 24 hours for Labor Secretary Alexis H. Herman to claim her office never reviewed it and it wasn't official policy.

Come 2001, a Republican appointee might be working the phones and writing the unofficial letters, so Clinton's enforcers need to codify their views. At the same time, they may just set themselves up for a lucrative life of private policy-making.

This is the central issue in the expansion of Title IX, and the reason that the Clintoncrats and their allies fight so fiercely for such regulation. Ultimately, the proposed regulation is not about helping any victims of purported sex discrimination. A woman already has a choice of ways to sue any government agency, private business, or government contractor she feels has discriminated against her.

Take the case of a forestry workshop run by the state park, the example cited in the *Federal Register*. If the park passed on hiring a qualified woman so as to hire a less qualified man, the aggrieved applicant could vindicate her rights under Title VII of the 1964 Civil Rights Act. The Equal Employment Opportunity Commission would investigate her complaint and, if it concluded that the charge was valid, pass the lawsuit on to the Department of Justice to pursue on the woman's behalf. If the EEOC didn't find fault, the woman could sue on her own. If a private company rather than a government agency is involved, Executive Order 11246 prohibits the company from discriminating against the woman. The Department of Labor's Office of Federal Contract Compliance would be responsible for investigating. If the woman was dissatisfied with the outcome, she could still go through the EEOC and file her own Title VII suit.

Title IX's expansion is, in the words of Cornell political scientist Jeremy Rabkin, "weapons modernization" for bureaucrats, lawyers, and left-wing activists. As CIR's Greve notes, "Title IX quotas in sports are the single hardest quotas we have." Combine these quotas with the mechanism that allows third parties to lodge complaints, as well as the compensatory and punitive damages Title IX makes possible (not to mention the inflated attorneys' fees), and the new, improved Title IX becomes the perfect vehicle to keep soon-to-be former political appointees employed as saviors of society's numberless victims.

There is, after all, plenty of unfinished business to attend to. Many universities and colleges still use the SAT for admissions. Some private companies still use standardized tests as a factor in hiring decisions. Title IX–style quotas might soon improve immeasurably the education programs in America's prisons, not to mention the possibilities for lectures on dance. True, Congress could hold oversight hearings and spoil all these social improvements. But don't count on it. ◆

Michael W. Lynch (mlynch@ reasondc.org) is Washington editor of REASON.

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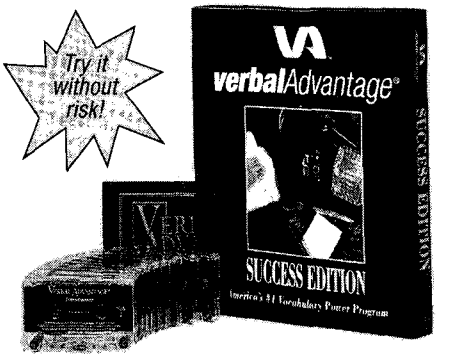

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The Year in Double Takes

Did they really say *that*?

By Walter Olson

This column is being written at year's end, a good time to round up the unused highlights from the past 12 months' file of double takes—news stories I had to recheck because it seemed so unlikely that they were real, along with quotes that left me wondering, "Could anybody have meant to say *that*?"

We may as well start our tour in Ontario, where last fall *The Boston Globe* and other newspapers reported a new milestone in sensitivity: The Central Experimental Farm, a government-run farm museum, had decided to stop giving cows human names like Elsie and Bessie because such names "might give offense to women." Said museum director Genevieve Ste.-Marie: "Some people are...sensitive to finding their name on an animal. I am, for example. Let's say you came in and found your name on a cow, and you thought the cow was old and ugly." Names like Clover, Rhubarb, and Buttercup were still deemed OK, with borderline cases such as Daisy being decided on a "cow-by-cow basis." (Also cited as acceptable was "Bossy.") After a flood of comment came in from an astounded public, virtually none of it supportive of the policy, the museum reversed itself.

From Britain, meanwhile, comes a fresh advance in the ever-popular art of grousing about how modern technology has wrecked an idealized past. You've already heard ad infinitum about how the structure of modern life artificially isolates us all and destroys family and community togetherness, what with all those one- and two-child families, sprawling suburbs, and auto-based work patterns, to say nothing of the nature-defying evils of biotechology and the accursed Internet. But now British writer Peter Hitchens, in his new book *The Abolition of Britain*, identifies an even more sinister culprit to be added to the list. "The spread of central heating and double glazing," he writes, "has allowed even close-knit families to avoid each other's company in well-warmed houses, rather than huddling round a single hearth forced into unwanted companionship, and so compelled to adapt to each other's foibles and become more social, less selfish beings." Hitchens, whose brother is the better-known leftist writer Christopher Hitchens, is a Tory and traditionalist conservative from whom much is clearly going to be heard in the future (about the past).

Where's the Beef?: Last fall a Canadian farm museum briefly stopped giving cows human names because it "might give offense to women."

What is it, anyway, with these British conservatives? Noted history writer Paul Johnson (*Modern Times, A History of the American People*) boasts a considerable following among liberty-minded Americans, few of whom apparently have taken the time to check out the decidedly unlibertarian ideas he sometimes vents in his weekly London *Spectator* column (titled "And Another Thing"). With his long background in journalism, Johnson not surprisingly holds strong views on freedom of the press—but they're the opposite of the views you might expect him to hold. His January 16, 1999, column proposed an Abuses of the Media Act that would, among other things, prohibit journalists from publishing material that invades the vaguely defined privacy of the people they're writing about (unless they can demonstrate a "public interest" in the reporting).

A dangerous idea? It's just the start of what Johnson has in mind: "A broader statute is required, one which would deal with at least two other areas: the use of technology and codes of conduct. The law should oblige media outlets to keep inventories of all reporting tools, such as tape recorders and cameras"—mercifully, Johnson leaves pencils and note pads unenumerated—"and make the use of instruments not so inventoried unlawful. Each use of them, and the purpose, would have to be logged with authorizing signatures by a senior executive of the organization. Second, media outlets would be obliged by law to adopt a comprehensive code of conduct along the lines of that now

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covering ministers and MPs [members of Parliament]. Breaches of the code would thus become professional offenses, and in certain cases criminal ones."

After reading that one I wanted nothing so much as to grab a copy of our First Amendment and hug it to my breast like a puppy. I gave the amendment an even more heartfelt clutch when another story came out of the U.K. later in the year, about the official British panel of inquiry that issued the so-called Macpherson report. (See "Trial by Fury," October 1999.) The panel was convened after an incident in which a young black man was set upon and murdered on the street by white hoodlums, touching off a national discussion very much along the lines of this country's "hate crimes" debate. Its proposals, however, wound up going much further than even the most ambitious American hate crime laws.

To begin with, the Macpherson report proposed that the definition of a "racist incident" be "any incident which is perceived to be racist *by the victim or any other person*" (emphasis added); that the police be expected to investigate and document such incidents "with equal commitment" whether the conduct in question was criminal or not; that the rule against double jeopardy be suspended for many defendants charged with such incidents but initially acquitted; and that consideration be given to amending the law to criminalize the use of "racist language" in private as well as public locales. "Taken together," notes David Frum in Canada's *National Post*, the recommendations "would make it possible for anyone in Britain to launch an investigation of anyone else for words uttered in the privacy of his own home. There's a word for that kind of regime: it's totalitarian." The proposals haven't passed yet, but on the other hand they didn't arouse a huge outcry.

Still, it would be unwise for Americans to get too smug about the superior tenacity with which we hew to the concepts of civil liberty. Consider, for example, the continuing expansion of American harassment law, which, in the view of some legal authorities, has made it legally hazardous while in an irritable mood to snap "Idiot!" at one of your co-workers or classmates, since such epithets might contrib-

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ute to a hostile environment for mentally disabled colleagues. Along with restricting a wide range of speech, harassment law has also begun to nudge many regulated entities toward affirmative professions of fealty to the prescribed orthodoxy. Thus employment law expert Jon Zimring of Duane, Morris & Heckscher told *The Christian Science Monitor* a few months ago that under recent expansions of the law managers will now have to "communicate to their employees that they agree with, *personally believe in,* and will enforce the harassment policy" (emphasis added).

Don't "personally believe in" the harassment policy, but plan to enforce it just because the government requires you to? You may be headed out the door. Under an agreement negotiated with federal bias cops, the *Monitor* reports, "salaried workers at all 23 U.S. Ford plants—with a total of about 40,000 workers—won't even be considered for a promotion for two years if they've been disciplined for *not supporting* the policy against sexual and racial harassment" (emphasis added). A second employment lawyer told the *Monitor* he expects such policies soon to be "standard operating practice" at U.S. companies.

In truth, 1999 was not the best of years for the free speech cause. We learned, for example, that presidential candidate Bill Bradley harbors all sorts of surprising ideas on the subject. "Special interest groups that run political advertisements should pay their opponents to respond," said Bradley on a September 21 radio call-in program in New Hampshire. He defended his plan as "simply a way to allow the market to work" (!) and said that under the law he would like to enact, "when issue ads are on, a 100 percent tax is given to the other side." A caller objected that "you are compelling people to support the opposing view, and you assume there is *an* opposing view, rather than many opposing views." Bradley acknowledged that the caller had a point but stuck by his position. Writing in *National Journal,* Stuart Taylor said Bradley had displayed in the exchange a "stunning disregard for First Amendment rights."

Then there's the Clinton administration, with its federal lawsuit against tobacco companies, which defines it as "racketeering" for the tobacco companies to have promoted "false and misleading *positions on issues*" (emphasis added). Particular counts of "racketeering" listed in the complaint include sending out press releases, buying full-page "issue ads" in newspapers, criticizing reports from the U.S. surgeon general, and circulating copies of a magazine article congenial to the companies' point of view. If a court upholds such a complaint, a wide range of unpopular interest groups might in the future be charged with "racketeering" over their advocacy activities.

Of course, it sometimes seems that tobacco companies are a special case: Absolutely anything may be done to them, and no extreme of hypocrisy displayed by their politician and trial-lawyer opponents will actually cause their tongues to cleave to the roofs of their mouths or provoke an angry lightning bolt to descend on them from the sky. Thus one of the notable add-ons to the tobacco litigation came recently when more than a dozen Indian tribes sued cigarette makers, complaining that they'd been cut out of their rightful share of the settlement loot. Just one problem: For many years the exemption of tribal sales from state tobacco taxes has made reservation "smoke shops" a huge moneymaker for many tribes, allowing them to cater to the smoking demand of non-Indian purchasers from a wide radius.

Indeed, as recently as 1997, the U.S. Department of Housing and Urban Development furnished the Reno Sparks Indian Colony with $450,000 "to build a smoke shop along Interstate 80 near the California border," according to the Bend, Oregon, *Bulletin.* The lawyer suing on behalf of many of the tribes conceded to Denver's *Rocky Mountain News* that some of his clients were themselves in the tobacco retailing business but said "it's terrible they got put in that position," which makes it sound as if running one of these money mints is something that could happen to any of us on a bad day. Coming soon: They forced us to run casinos.

Presidential candidate Bill Bradley harbors all sorts of surprising ideas about free speech. "Special interest groups that run political advertisements should pay their opponents to respond," said Bradley on a September 21 radio call-in program in New Hampshire. He defended his plan as "simply a way to allow the market to work."

Our final rub-your-eyes quote was actually uttered several years ago but finally made it into the mass-circulation record last year thanks to REASON Contributing Editor Cathy Young, who has written a series of articles in *Salon, The Detroit News,* and elsewhere on the abuse of domestic restraining orders. Young found that such orders, typically meant to restrict the movement of men who show a dangerous proclivity to harm their wives or children, are handed down by judges in many cases where the evidence is weak that a husband is or has been abusive; carry harsh consequences for many of their hapless targets; and sometimes are used as a bargaining chip by the wife's side in divorce negotiations.

The quote: "Your job is not to become concerned about the constitutional rights of the man that you're violating as you grant a restraining order," said Richard Russell, an Ocean City, New Jersey, judge caught on tape addressing his peers at a 1995 conference. "Throw him out on the street, give him the clothes on his back and tell him, see ya around....The woman needs this protection because the statute granted her that protection....They have declared domestic violence to be an evil in our society. So we don't have to worry about the rights."

These days, too many people in positions of authority figure they don't have to worry about the rights. Which strikes me as all the more reason why we should.

Contributing Editor Walter Olson (wo@walterolson.com) is a senior fellow at the Manhattan Institute and edits Overlawyered.com.

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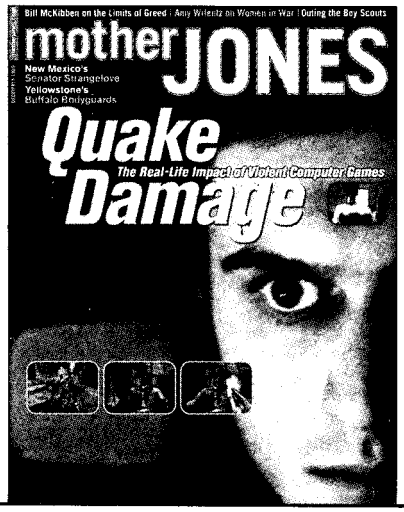
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Capitalism's Poet Laureate

By Paul A. Cantor

Shakespeare's Twenty-First Century Economics: The Morality of Love and Money, by Frederick Turner, New York: Oxford University Press, 223 pages, $35.00

Marxist scholars have been arguing for years that Shakespeare was a creature of the Elizabethan marketplace, but Hollywood and movie audiences everywhere finally got the message in 1998 with the success of *Shakespeare in Love.* That immensely popular film suggested that the imaginative energy of Shakespeare's plays somehow fed off the new economic energy of the bustling Elizabethan commercial theaters. Except for box office concerns, the movie might just as well have been titled *Shakespeare in Debt,* since it portrays a harried author driven by financial necessities to create a masterpiece like *Romeo and Juliet.*

The critics who first made the connection between Shakespeare and capitalism were looking to take Shakespeare down a peg or two, but the unintended result has been to elevate capitalism. The Marxists sought to debunk the myth of Shakespeare as an individual genius by showing that he was part of a market system, collaborating with producers, directors, actors, and others in what amounted to a communal effort. But in stressing the commercial origins of Shakespeare's art, these critics undermined the longstanding Marxist prejudice that capitalism is the enemy of culture.

There are signs that the academy is finally reassessing the cultural role of capitalism and overcoming its traditional contempt for money making. Literary critic Lisa Jardine has written a revisionist history of the Renaissance, *Worldly Goods* (1996), in which she argues that the great cultural achievements of the period were sparked by its new entrepreneurial spirit. More generally, economist Tyler Cowen argues in his book *In Praise of Commercial Culture* (1998) that capitalism has been the most productive cultural force in history, a claim he documents in case studies as diverse as Florentine painting, German chamber music, and the English novel. (See "Cultivating Culture," October 1998.) Now critic and poet Frederick Turner has joined the debate with his original and provocative book *Shakespeare's Twenty-First Century Economics,* making analytically and seriously the point that *Shakespeare in Love* made intuitively and comically. Turner puts forth the audacious claim that Shakespeare was in effect the poet laureate of capitalism.

Turner, a REASON contributing editor and a professor of arts and humanities at University of Texas at Dallas, senses that the time is ripe for a re-evaluation of Shakespeare's view of commercial activity. The collapse of communism has discredited Marxist theory, and the worldwide success of market reforms has forced even professors of economics to take a fresh look at how capitalism works. Turner sees that the virtue of the free market goes beyond merely economic considerations; it encompasses a whole range of ethical and political goods.

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"The market is the place where one can begin to communicate with strangers, where one can negotiate...where defeat does not mean extinction but the opportunity to pull a better deal another day," writes Turner. "It encourages a basic level of civility and requires of those who would profit by it a preparedness to take risks in trusting others....The Shakespearean theater was a kind of marketplace; and that market was one of the preconditions for the emergence of democratic politics."

Thus, when Turner looks at Shakespeare's plays, he is prepared to find the economic and ethical realms, not at odds as in so much academic discourse, but in harmony, as the playwright creates a continuum between our material and our spiritual values. (Turner presented many of these ideas in his March 1997 REASON article, "The Merchant of Avon.") For example, Turner shows that in Shakespeare's treatment of marriage, he does not divorce financial considerations from emotional ones, as a Romantic poet would. In Shakespeare, the successful marriage is a very practical matter and unites emotional *and* financial well-being. That is why he ultimately focuses on the marriage *bond.* Turner makes much of such dual meanings in Shakespeare, when such words as *trust, interest, debt, redeem,* and *venture* have at once spiritual and financial significance.

In an elegant and closely reasoned discussion of *The Merchant of Venice,* Turner shows how the heroine Portia uses her wealth for positive purposes, making harmony prevail in a community divided by religion. Decades of literary criticism have conditioned us to expect that any discussion of economics in literature will be Marxist in nature. But Turner repeatedly turns the tables on Marxist critics. Consider, for example, his discussion of the comic moment in *Merchant* when Launcelot Gobbo's old father cannot recognize his own son on the street:

"It would be easy to give a Marxist view of this episode: that the new impersonal cash and commodity exchange economy alienates family members from each other

Bargaining Bard: Shakespeare, writes Frederick Turner, implies "that the mercantile city affords greater opportunities for new personal relationships, without necessarily damaging the old ones."

and creates a society of isolated selfish individuals. But this interpretation is too facile for the wise Shakespeare....It only takes a few minutes for Old Gobbo to recognize his son, so the alienation of city workers from their country ancestors is not really so terrible. Thus Shakespeare is implying that the mercantile city affords greater opportunities for new personal relationships, without necessarily damaging the old ones—a conclusion quite contrary to those of most critics of capitalism."

Turner's book is filled with this kind of sanity and clarity, moments when he makes us take a fresh look at a scene we may have read or viewed dozens of times without appreciating its significance. But his book is something far more than a series of new readings of familiar scenes; it adds up to a fundamental reconception of Shakespeare.

Turner writes, "This book makes three arguments, following Shakespeare. First, that human art, production, and exchange are a continuation of natural creativity and reproduction, not a rupture of them. Second, that our human bonds with one another, even the most ethical and personal, cannot be detached from the values and bonds of the market. And third, that there is a mysterious dispensation according to which our born condition of debt can be transformed into one of grace. These three arguments may be taken as refutations of the three reproaches to the market offered by its critics: that the market necessarily alienates us from nature, from each other, and from God." Thus the challenge of Turner's book is twofold: It invites us to rethink our view of Shakespeare, but perhaps more important, it invites us to rethink the relation of our economic to our spiritual life.

A book this ambitious is not going to be without flaws, and at times I found myself quarreling with Turner's understanding of both economics and Shakespeare. Turner's basic grasp of the virtues of capitalism is sound, and he makes many acute observations about how markets function and how they are superior to centrally planned economies. But his command of certain details of economic theory at times seems weak.

For example, Turner operates with a peculiar definition of money "as a generalized and quantified measure of the obligations that unspecified others owe me and the obligations I owe others." In a book devoted to countering Marxism, it is surprising to find a concept of money that comes perilously close to the labor theory of value. Turner's failure to understand the commodity nature of money leads him in turn to misunderstand the monetary nature of inflation, as shown by perhaps his most peculiar economic claim in the book: "A low rate of inflation is the sign that a people at large...actually trust the fairness and truthfulness of the market that gives money its value." As most reputable economists would agree, inflation is a product not of the regular functioning of the free market but of government intervention in the market: Inflation is the fall in the value of money brought about by government manipulation of currency and credit. Fortunately, Turner's occasional errors in economic theory do not invalidate his overall argument and are basically irrelevant to what he has to say about Shakespeare.

As for Turner's interpretation of Shakespeare, though I learned a great deal from it, I feel that ultimately his portrait is not true to the whole of Shakespeare. Turner gives us a comic, not a tragic, Shakespeare. In what I regard as the most profound understanding of tragedy, Hegel's, it involves the irreconcilable conflict between two goods: between the city and the family in Sophocles' *Antigone*, or, to take an example from Shakespeare, between the demands on Lear as a king and the demands on him as a father. But given Turner's focus on the market as a force for harmony, he is always looking for ways to reconcile seemingly antithetical realms of value.

Accordingly, he is drawn to Shakespeare's comedies and romances, in which reconciliation is the great theme. His book begins and ends with *The Winter's Tale*, and he devotes more time to *The Merchant of Venice* than to any other work, calling

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it "perhaps Shakespeare's most intellectually brilliant play." Even when Turner discusses tragedies such as *King Lear* and *Antony and Cleopatra*, he almost makes them sound like comedies, or at least he stresses the element of reconciliation and even triumph in their endings. Thus Turner tends to lose sight of the tragic dimension in Shakespeare, especially his profound sense of the tragic tension between aristocratic values and the new democratic values just emerging in his day.

And yet in one respect Turner himself displays a profoundly tragic awareness. For Turner, the tragedy of the 20th century has been the failure to appreciate the virtues of the market economy and the misguided turn to command economies for material salvation: "Modern ideologies of the economic injustice of the market, despite the fact that they have been disproved in theory and have failed in practice, have created a resentful poor with historically new feelings of entitlement. The planet has groaned with wars and massacres for a century as a result....The irony is that modern market economies are almost certainly much fairer than the feudal regimes they replaced."

One rarely sees this kind of clear-headed thinking about economic matters from an academic in the humanities, let alone a literary critic. Turner may give too optimistic a reading of Shakespeare, but it is hard to fault his optimism about the future of economic freedom. ◆

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The Man Question

By Cathy Young

Stiffed: The Betrayal of the American Male, by Susan Faludi, New York: William Morrow & Company, 662 pages, $27.50

Women Can't Hear What Men Don't Say, by Warren Farrell, New York: J.P. Tarcher, 371 pages, $24.95

The debate about gender has been, by and large, a debate about women. For centuries, the "Woman Question" had no male counterpart; men's condition was seen as the universal human norm, and little thought was given to how equality would change male roles. Over the past few decades, however, the notion of a universal human anything has been left in tatters, and feminism has increasingly shifted its focus from formal barriers to equality to cultural beliefs about gender—including the male gender. Meanwhile, three decades of often turbulent change in relations between men and women have given rise to talk of a "decline of males" and a "crisis of masculinity" and engendered a fledgling men's rights movement.

The latest book to wrangle with the Man Question comes from Susan Faludi, whose previous contribution to the gender wars was the 1991 bestseller *Backlash: The Undeclared War Against American Women*. An almost completely mythical exposé of a society-wide, decade-long effort to undo women's gains, *Backlash* was not a very male-friendly book. Its central thesis was that men feel threatened by gender equality, and so male-dominated culture mounts a "backlash" whenever women make even modest steps toward this goal.

Stiffed: The Betrayal of the American Male is the result of Faludi's six-year exploration of "the American male dilemma," which began, by her own account, as an attempt to find out just why men "so often and so vociferously resist women's struggles toward independence and a fuller life." It says a great deal about the original spirit of her project that the first stop on her quest to understand men was a batterers' counseling group (which is rather like starting a study of women by hanging out with hookers). But along the way, Faludi became convinced that she was asking the wrong question; that the "male crisis," while real, had nothing to do with feminism; and that men—even the batterers—were, like King Lear, more sinned against than sinning.

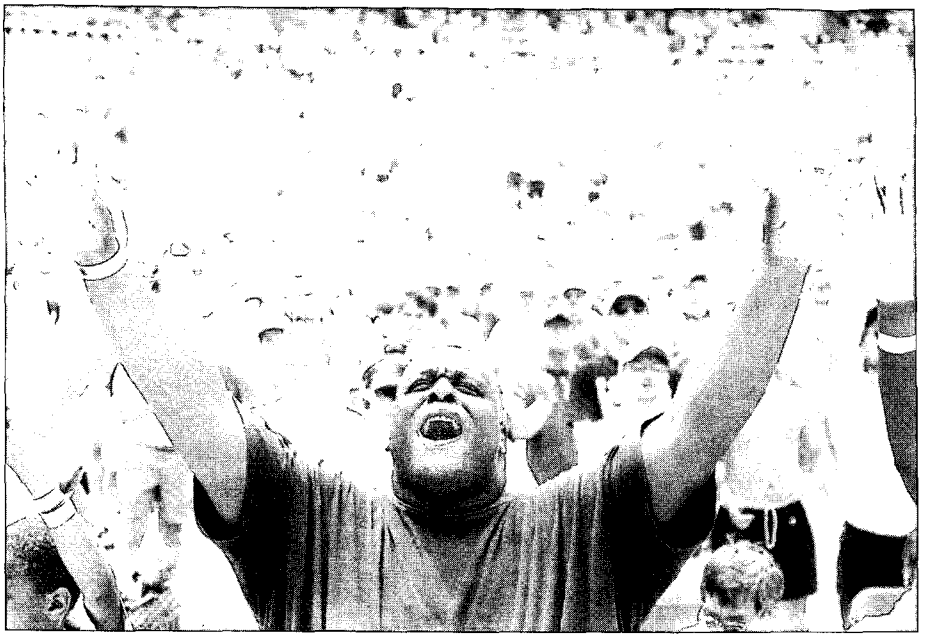
So who's doing the sinning? Faludi says it's mainly modern capitalism, which strips masculinity of its positive and meaningful aspects.

Interestingly, unlike many feminists, Faludi does not equate traditional masculinity with abusive, egotistical dominance. Rather, she notes that cultural concepts of manhood have always been based on caretaking, social responsibility, and productivity—values she sees embodied in the workingmen of a glorified industrial past, like the rugged steel factory foreman in the 1946 photo on the cover of *Stiffed*. The older order may have "exploited men's health and labor," may have "broke[n] the backs and spirits of factory workers and destroyed the lungs of miners," but at least, Faludi writes wistfully, "it defined manhood by character, by the inner qualities of stoicism, integrity, reliability...the desire to protect and provide and sacrifice."

Is this the same Susan Faludi who once described male attachment to the provider role as the chief obstacle to women's progress? Yes, it is. But she has hardly turned into a new traditionalist. Her romanticized portrait of blue-collar manliness is strangely unsexed: The workingman's sense of male identity, she asserts, came from doing something "worthwhile," not from being masculine per se. She carefully skirts the fact that this identity was based on a sexual division of labor: the ability to take pride in doing a "man's job" (i.e., occupational segregation by gender) and in supporting a stay-at-home wife.

Faludi's account of the plight of men today is just as skewed. Men, she writes, "find themselves in an unfamiliar world where male worth is measured by participation in a celebrity-driven consumer culture and awarded by lady luck," where "useful" work matters less than glamor, where they can only "enact a crude semblance of masculinity" before the media's looking glass. The modern man, Faludi argues, doesn't really get to be a man. The best he can hope for is to play one on TV.

Imprecations against an age in which



Dubious Sample: Susan Faludi's study of the "male crisis" is based on a highly unrepresentative cast of characters, including the Promise Keepers, shown here.

AP / WIDE WORLD PHOTO

image has eclipsed substance and entertainment has usurped life are hardly new (and one need not be an anti-market grouch of the left or the right to believe that these critiques, however overblown and hysterical, contain some valid points). The new twist Faludi adds to this theme is that "ornamental" masculinity has reduced the 1990s man to a condition much like that of the 1950s woman, a state of "objectification, passivity, infantilization, pedestal-perching, and mirror-gazing."

To reach this startling conclusion, Faludi has to employ a rather sweeping definition of "ornamental" masculinity. She is not merely, as one might think, talking about the ubiquitous male Calvin Klein models and other signs of male vanity on the rise. Most of us would see important distinctions between a model, an athlete, a venture capitalist, and an astronaut; in Faludi's jaundiced eye, they're all equally passive objects of the public gaze, all creatures of hype rather than real accomplishment.

Upon a closer look, it turns out that Faludi's real gripe is not with passivity, but with individualism: "The team of men at work [has been] replaced by the individual man on display," she grieves, as if these were the only options available. She gets misty-eyed about the scene in the 1949 film *Sands of Iwo Jima* in which John Wayne promises the young recruits he will teach them to "move like one man and think like one man." Recounting Shannon Faulkner's fight to get into the Citadel, Faludi can't resist sympathizing with the male cadets who wanted no part of her: They were, after all, a brotherhood, and Faulkner a media-savvy self-described "individualist."

Faludi's other bugaboo is an ever-changing society. The fathers' betrayal, it turns out, is that the world they left their sons was different from what the sons had expected. Today, Faludi laments, "the father has no body of knowledge or authority to transmit," and "each son must father his own image, create his own Adam." Indeed, it seems that in her ideal world, sons would, just like in medieval times, routinely join their fathers' trade. When Los Angeles gang-banger-turned-author Kody Scott talks bitterly about desertion by his father, National Football League player Dick Bass, Faludi reflects, "But even if Dick Bass had been around...what sort of knowledge could he have deeded a son? Bass wasn't likely to pass on to Kody the ability to become an NFL football player." Is Faludi really saying that a father's only real function is to teach his son a useful craft? Has she ever paused to think that most of her working-class heroes slaved away at back-breaking jobs so that their sons *wouldn't* have to do the same kind of work?

As most critics have noted, Faludi's study of the "male crisis" is based on an odd cast of highly unrepresentative characters—some colorful, some tragic, some merely pathetic. There are laid-off shipyard workers and middle-aged victims of corporate downsizing. There are the infamous "Spur Posse" boys who engaged in a points-for-sex contest, and who seem far more excited about being on TV than they are about the sex. There are Promise Keepers and militiamen, rabid football fans who are devastated when the owner of the Cleveland Browns decides to move the team to Baltimore, and male porn stars undone by erectile dysfunction. And there's Sylvester Stallone, whose angst gets more than 30 pages of text.

Faludi apparently realizes that her unorthodox sampling technique might undercut the validity of her case in some people's eyes, so she tries to neutralize this criticism in advance by quoting one of the militiamen: "If you want to see what's happening in the stream called our society, go to the edges and look at what's happening there, and then you begin to have an understanding...of what's going on in the middle." It may be a catchy metaphor, but it's certainly suspect social analysis.

Some of the stories in *Stiffed* are poignant, gripping, and well-told, even if they tend to go on and on. Faludi does offer some interesting insights—for example, on the peculiar mix of gender traditionalism and New Sensitive Manhood in the Promise Keepers movement. And I suppose there is some value simply in her recognition that men are not powerful oppressors but human beings whose stories deserve to be heard and whose suffering deserves compassion (even if she makes such an odd selection of stories to hear and so misdiagnoses the suffering).

But what does it all add up to? Faludi wants men to rebel against their "ornamental imprisonment" as women did against theirs, and suggests that feminism —which, in her peculiar interpretation,

becomes an anti-consumerist revolt—can offer men a key to their own liberation. However, she cautions, men cannot simply follow the feminist model of activism: Women could fight against "a clearly defined oppressive enemy" (male domination) and lay siege to patriarchal bastions, while men have no turf to conquer, no identifiable antagonist to defeat.

Faludi suggests that men need to find a new, noncombative paradigm of liberation, and that in doing so they will actually help revive feminism, since the "paradigm of confrontation" has outlived itself for women, too. It's an intriguing idea, but what is this "new paradigm"? What is it that men should actually do? Here Faludi is exceedingly vague; she mentions men who went to the Million Man March or Promise Keeper rallies not in search of an agenda but simply to be with other men and find "a place where they could start to think about their situation afresh." That's a pretty small payoff for a 662-page tome.

Given the way Faludi overdraws her portrait, it's tempting to conclude that there is no "male dilemma" at all. It's certainly true that most American men are happy (or at least satisfied) with their family lives and their work, even if it's not "meaningful" by Faludi's standards. They would not recognize themselves in *Stiffed* and its melodrama of betrayal. Nevertheless, not everything *is* fine for men, though for reasons far different than Faludi supposes. The cultural climate has been infected with a view of masculinity as "toxic," a fact Faludi barely mentions, probably because doing so would implicate feminism in men's distress. That's the one thing she wants to avoid. The tendency to blame men for anything that goes wrong between the sexes can and does affect public policy and the legal system. Many men are genuinely confused by women's expectations and feel that feminism has led only to a new set of double standards. Finally, there is men's often involuntary estrangement from their children. If one group of American men feels truly "stiffed," it is divorced fathers, bafflingly absent from Faludi's account.

Those "men's issues" are explored by Warren Farrell in *Women Can't Hear What Men Don't Say*. Farrell, whose last book, *The Myth of Male Power* (1993), has become a men's movement bible, views the male predicament from a radically different perspective than does Faludi. Interestingly, his interest in this subject, like hers, grew out of feminism. In the 1970s, he served on the board of the New York City chapter of the National Organization for Women and became the feminists' favorite "liberated man" (he even published a book by that title). Then he began to talk about the male side of the war between the sexes, which cost him his friendship with Gloria Steinem and earned him Susan Faludi's ridicule in *Backlash* for "standing up for men, the new downtrodden."

Both Faludi and Farrell end up painting much too bleak a picture of men's lot. Still, if these books signal the start of moving beyond the oppressor/oppressed paradigm of male-female relations, that is something to be applauded.

Farrell's basic argument is that both men and women need to be freed from the rigid roles of the past, and here he takes a decidedly optimistic view of the liberating potential of technological and cultural change. Today, he says, we are in a period of "gender transition" in which both sexes have to make difficult adjustments and deal with complicated dilemmas.

But seeing women as the oppressed sex, we have focused only on women's problems and men's faults. As a result, gender issues are often reduced to "women good/men bad" clichés. Family violence studies showing that women can be aggressors as well as victims have been ignored or swept under the rug; discussions of working women's "second shift" of domestic labor have neglected male contributions and downplayed the fact that overall, American women have more leisure time than men. Male bashing flourishes not only in the feminist movement but in popular culture, from sitcoms to greeting cards. ("Grow your own dope...plant a man" is one of the more innocuous examples cited here.) This atmosphere, Farrell argues, poisons relationships by feeding women's anger at men—"the most dangerous forcefield of anger ever aimed at either sex."

One need not accept Farrell's implausible view that men and women have always had equal-but-different roles with no real imbalance of power to see the value of his perspective. It is quite clear that in the past 30 years, women's options have expanded far more than men's; women can now work *or* stay home without incurring any significant social disapproval, but a stigma still attaches to a man who lives off his wife's earnings. Moreover, it's often women who actively enforce the male provider role by shunning men who fail to perform it. (Some of Faludi's stories illustrate this point—many of the white-collar workers who lose their jobs are promptly dumped and sometimes treated quite horribly by their wives—but she is interested only in the men's feelings of "emasculation," not in what this says about women's attitudes.) As Farrell points out, even women who have or aspire to successful careers usually don't see lower-status men as marriage material, and that's one form of traditional prejudice one hardly ever hears feminists criticizing.

Women Can't Hear What Men Don't Say makes a persuasive case that male disadvantages, in areas from education to health care to criminal sentencing, have not received the attention lavished by academics, the media, and government on real or imagined female troubles. For instance, initiatives to empower girls eclipse the fact that boys are the ones increasingly falling behind in schools. Farrell chronicles the tendency of institutions to shut out nonfeminist perspectives on gender issues—what he calls "The Lace Curtain," a term coined by conservative writer Nicholas Davidson—and shows that feminism has become the "one-party system of gender politics." His argument that feminist demands for special protections often overlap with traditional chivalry toward women is not wholly original, but it's a point that bears repeating. In Farrell's memorable phrase, "protecting women creates sexual equality no more than welfare payments created class equality."

Unfortunately, like many feminists, Farrell can't resist overstating his case. Thus, in his discussion of housework, he does an excellent job of exposing flaws in studies that indict men as shirkers, including Arlie Hochschild's much-hyped book *The Second Shift*; but his list of 50 categories of male contributions to the household gives a major opening to those eager to dismiss his entire case. Farrell splits a single category—"repairs"—into multiple items ("carpentry," "gas/electric failures," "remodeling," etc.), lists activities that take place once a year or less often (putting up Christmas lights, stereo hookup, car buying), and comes up with such bizarre items as "options generating" (suggesting which restaurant or movie to go to).

Farrell's description of anti-male biases in the media and culture, while mostly on-target, also includes some dubious assertions—for instance, that man-hating feminist Andrea Dworkin "has been given mainstream credibility by...reviews and coverage in *The New York Times*," starting with the assignment of her book *Pornography* to "a feminist (Ellen Willis) to review." Willis is a well-known foe of anti-porn feminists, and her review of *Pornography* was extremely negative.

A more serious problem is Farrell's wholehearted embrace of platitudes about the need for men to "be in touch with their feelings"—not to mention the little anecdotes illustrating what an emotionally evolved fellow the author is (e.g., he cries over *The Bridges of Madison County*). After a while, the talk about "caring," "sharing," and "love" gets so treacly that one feels like reaching for a volume of the Marquis de Sade or watching the World Wrestling Federation.

Indeed, the contrast between Farrell's and Faludi's view of the world is not always in Farrell's favor. Howver bizarre Faludi's definition of work may be, she at least believes that men and women cannot respect themselves or feel truly human unless they have "something worthwhile to *do*" (emphasis hers). Farrell laments that traditional male roles encouraged a man to become "a human doing" defined by work, rather than "a human being" defined by feelings. In his rendition, everything men have achieved throughout history is reduced to the onerous role of "performing."

Of course, men should not be stigmatized for expressing emotion—though there is a big difference between having feelings and coddling them—and men's suffering should not be seen as unworthy of compassion. But Farrell considerably exaggerates the degree to which men have been subjected to such standards; and surely today, when political candidates are routinely psychoanalyzed by the media and public schools are teaching students how to express their feelings, the last thing we need is more jabs at the already-battered virtue of emotional reticence.

Is the current lack of political interest in men's problems caused by the stigma against male complaining and indifference to male feelings, as Farrell thinks? Such norms have never been a barrier to addressing concerns about the plight of male workers such as, say, coal miners or factory hands. It's only when an issue is framed as a gender issue that female disadvantage tends to be magnified and male disadvantage to become invisible. This mentality needs to change, but that can be accomplished without encouraging men to join the touchy-feely Oprahfied culture. It's one thing when a man talks about the pain of losing his child in a divorce; it's quite another when he ruminates that the role of suggesting social activities "often involves having one's ideas rejected, which can be emotionally taxing."

If one has the patience to cut through the psychobabble, Farrell's ultimate recommendation is a sound one: "to create not a women's movement blaming men, or a men's movement blaming women, but a gender transition movement." Unlike Faludi, he actually proposes a fairly specific (and mostly positive) agenda for this movement, from recognizing fathers' rights to ending discrimination against men in areas such as the military draft to special protections for female crime victims.

Both Faludi and Farrell end up painting much too bleak a picture of men's lot. Still, if these books signal the start of moving beyond the oppressor/oppressed paradigm of male-female relations, that is something to be applauded. One can only hope that the movement is in the direction of ending the victim sweepstakes, not adding men to the roster of contestants.

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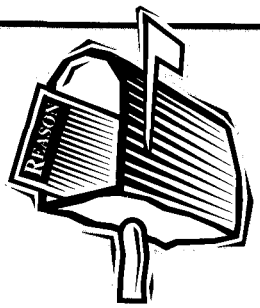
Institutional Support

By John Nye

Property and Freedom, by Richard Pipes, New York: Alfred A. Knopf, 384 pages, $30.00

Property rights have become fashionable. All over the world, academic intellectuals, politicians, and career bureaucrats are acknowledging that a respect for private property and the rule of law are the necessary foundations of a prosperous economy and a free nation. Academic economists such as Nobel laureates Ronald Coase and Douglass North have revived an interest in the importance of well-specified property rights for economic growth, inspiring such organizations as the World Bank to devote more attention to this area. After a century during which academics, pundits, and policy makers preferred treating the economy as a well-oiled machine that could be manipulated for progressive social ends without regard to property rights, such devotion to an idea that was at the heart of the Scottish Enlightenment is gratifying.

Journalist Tom Bethell's 1998 book, *The Noblest Triumph* (see "The Advantages of Ownership," January 1999), was the first attempt to survey these ideas for a general audience. Historian David Landes, after decades of focusing on technological and cultural explanations for economic success, gives a prominent place to property in his recent *The Wealth and Poverty of*



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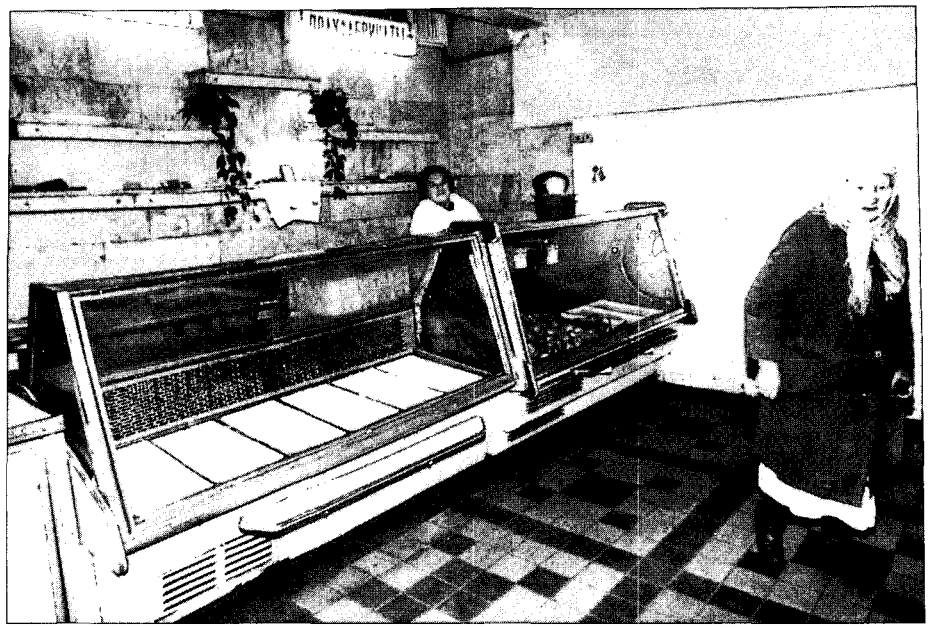

Maybe Tomorrow: The net result of Russia's historical flip-flopping between individual and collective property rights has been weak economic development. Pictured: A store in Moscow, circa 1991.

AP / WIDE WORLD PHOTO

Nations (1999). Now comes Richard Pipes' view of property's importance in the history of Western civilization.

Property and Freedom is something of a departure for the author, a distinguished professor at Harvard who is a leading authority on the history of Russia and the Soviet Union. In this ambitious and wide-ranging work, Pipes writes that he seeks to provide the first book in modern times to explain, "based on concrete historical material,...just how property gives rise to freedom and how its absence makes possible arbitrary authority." Setting aside the question of originality, how well has he succeeded?

While sections of the book are both fascinating and instructive, the result is sometimes puzzling and often frustrating. Pipes brings strengths to the discussion, particularly his Russian expertise. But the work fails to build on an existing body of pertinent economic and historical literature, and it is possible that Pipes is unfamiliar with that research. His strengths are seen in the historical overviews, but the analysis is incomplete.

Pipes shows us how important and controversial are many of our most common notions about property, and that their finest expression comes from the revolution in British thinking in the 17th and 18th centuries. He is particularly impressed with the ability of individuals to resist arbitrary taxation by the Crown, stressing the tale of John Hampden, who refused to pay the king's forced loan of 20 shillings—which he could well afford—and who chose to go to trial in 1637–38. This was unusual and remarkable, and Pipes notes that for "a historian of Russia [this was] a mind-boggling event, since in the entire history of that country, extending over seven centuries, not a single instance can be found of a subject defying his sovereign and being given his day in court."

Pipes makes clear how the notion of individual rights has struggled to emerge side by side with the pursuit of liberty, against a backdrop of political leaders and intellectuals continually seeking to replace all individual rights with a broader structure of communal, social rights. He pays particular attention to the French Revolution because it featured two contending views of emergent liberalism. On the one hand were those who saw the French Revolution as mirroring the American, with its interest in individual freedom and the necessity of creating rights that safeguarded that free-

dom from the tyranny of the state. On the other were the radical elements who wanted the opportunity to remake society according to their own dictates, and who saw some form of social or communal property as central to any properly ordered new society. Pipes makes much of the French *philosophes'* aversion to quotidian "reality" and their tendency to judge mankind from the standpoint of idealistic utopias. He notes that when Boswell visited Rousseau, the latter remarked, "Sir, I have no liking for the world. I live here in a world of fantasies, and I cannot tolerate the world as it is....Mankind disgusts me."

Despite Pipes' excellent treatment of the intellectual origins of the French aversion to property and the individualism it connoted, he pays little attention to the question of how well property rights actually functioned in Britain and France. He is content with noting that the Continent was not as consistently supportive of property rights as Britain. Yet by the standards of history, and compared to the Russian example, both Britain and France did well. Indeed, some researchers have argued that, despite the radicalism that so distinguished the French Revolution from the American, the effect in much of the country was the development of a system of rights and regulations that did much to enhance individual property ownership. (See, for instance, J.L. Rosenthal's *The Fruits of Revolution: Property Rights, Litigation, and French Agriculture, 1700–1860.*)

The most satisfying section of the book is its treatment of property rights in Russian history. As an acknowledged expert, Pipes is in an excellent position to comment on the development of such rights in Russia and the Soviet Union, and his discussion of various rulers' attempts to alternately establish or destroy the institutions of private property is fascinating. It seems that every historical episode in which individual property rights were reasserted was immediately followed by a disastrous return to communal or state property, often at great cost in lives and suffering. The net result for Russia is restricted economic growth and poor development.

To cite one example, Peter the Great is often saluted for having modernized Russia's culture and economy. But Pipes makes clear that Peter's Westernization was primarily cultural and technological. Although receptive to Western ideas in art, literature, music, and science, Peter did little to adopt the legal institutions so crucial to English success. Rather than improving individual property rights, Peter blurred a variety of existing distinctions and endangered the long-run stability of all reforms through arbitrary confiscation. Peasant agriculture was held back by a law requiring that all holdings must be bequeathed *in toto* to a single heir. Though intended to stop the devolution of large holdings into small parcels through inheritance, the law had the effect of destroying the working land market that had begun to emerge in Russia.

But even this wonderful chapter suffers from analytical deficiencies that might have been addressed had Pipes paid a bit more attention to the theoretical literature on the creation of property rights. He makes a few limited references to economic historians but writes as if he is unaware of the literature on the importance of "credible commitment" in the establishment of property rights. This body of work makes the not-so-obvious point that reforms often do not succeed because 1) they are not properly implemented or 2) they are not believed.

Promoting the virtues of private property and freedom is always necessary—even in these days when the idea of the market economy seemingly stands triumphant.

The latter point is particularly salient in the case of Russia and the Soviet Union. It is not enough to liberalize or modernize here and now; you have to convince people that investment will pay off in the long run. Promises are not sufficient; only the creation of sustainable institutions that restrict the state's power to make arbitrary confiscations or to default on early commitments will do. Indeed, a case can be made that many of Russia's current difficulties stem from a lack of the well-established legal rights that undergird a market system.

Privatization and liberalization do not do much to modernize a nation that is often on the brink of anarchy and that has inherited institutions from a regime in which all notions of individual liberty were systematically destroyed. Some attention to the results from the "credible commitment" research would have given more focus and rigor to Pipes' otherwise admirable historical treatment. Although Pipes wishes to leave out technical and theoretical debates, some points just cannot be made without a thorough reading of the literature.

Nor does Pipes always follow through on his insights. He claims, for example, that the abundance of land in Russia hampered the rise of institutions to govern individual property relations. He notes that "the surfeit of land in Russia prior to the nineteenth century had two important effects. In the first place, it led to the underdevelopment of all those institutions which in regions where land was in short supply produced civil societies... secondly, the seemingly inexhaustible profusion of land...impressed on the Russian peasant the conviction that the soil, like water and air, was *res nullius* which God had created for everyone's benefit and which, therefore, could not be owned."

This is an important idea that has emerged in other contexts, most notably in the work of Ester Boserup in anthropology (whom Pipes does not cite) and Douglass North in economics (who is cited in other parts of the book), both of whom have linked land abundance or scarcity to the evolution of social institutions regulating property. Yet having made this claim, Pipes seems to change the thrust of the argument by noting that rudimentary institutions of private property were starting to evolve before being eliminated in the 13th century, in the aftermath of the Mongol invasion.

Here Pipes emphasizes historical contingency as the culprit in Russia's poor development, even suggesting a counterfactual that property rights would have developed had the Mongols not invaded.

Which was it? Historical forces deriving from the abundance of land, or the bad luck to have been invaded and overrun by the Mongols? Long-run pressures, or short-run accident? Not only does Pipes offer no answer, he doesn't even acknowledge the problem.

Perhaps this project would have been more rigorous and thorough had it been confined to a theme like *Property and Freedom: Comparing Russia With the West*, itself a monumental task. Of course, such a book probably would have appealed to a readership small enough to fit inside a small theater, so Pipes shouldn't be faulted for expanding his horizons.

Pipes' final chapter, which addresses the 20th century, is especially representative of the book's promises and frustrations. Pipes wants to show how conflicts about property rights are all of a piece, but in the conclusion his reach clearly exceeds his grasp. Big issues, including the rise of socialism and fascism as well as the growing welfare state, are given parallel treatment (in separate sections) with small American policy debates about busing or affirmative action. The discussion is much too limited, even superficial, and the links between cause and effect are not well established.

Such shortcomings are evident from the chapter's opening sentence: "Of all the ages in history, the twentieth century has been the least favorable in the institution of private property, and this for both economic and political reasons." Surely Pipes did not mean that. He probably wished to argue that from an intellectual standpoint, the number of challenges to modern property rights that have emerged is unprecedented. (This tendency to confuse intellectual elites' attitudes toward property with the actual functioning of social institutions also marks Pipes' discussion of the French Revolution.)

Yet it is the very success of property rights *in fact* that has made the variety of governmental intrusions, whether small or large, seem so indefensible. Similarly, the state may have been smaller (in terms of tax revenue) before the 20th century, but this did not make it less intrusive or arbitrary. Furthermore, the rise of modern technology, though it has promoted collectivization in some circumstances, has done much to safeguard rights by enabling us to avoid regulation. But the role of technology in restricting state authority does not play any serious *role in* this last chapter. Indeed, it is missing throughout the book.

Surely one of the reasons why European governments have tended to liberalize some aspects of international finance more rapidly than other areas is that the ease with which large capital moves around the world makes it more likely that an overly restricted system will suffer much with few benefits. Hence our freedom from arbitrary confiscations beyond a certain point is safeguarded by a technology that makes seizure of physical property not nearly so important as transfers of financial, commercial, and intellectual capital. Market competition and new technology have often been the undoing of the most hidebound collectivist. Again, the historian's tendency to emphasize conscious design and statesmen's intent rather than actual performance restricts Pipes' ability to investigate the de facto evolution of world property rights.

Despite the book's shortcomings, it is a stimulating and educational tour. Promoting the virtues of private property and freedom is always necessary—even in these days when the idea of the market economy seemingly stands triumphant. As events surrounding the World Trade Organization's Seattle meeting demonstrated, the forces of reaction are ever ready to denounce our era and wait for a crisis to try to return us to the collectivist dreams of yesteryear. Pipes reminds us that socialism is one of the oldest of human fantasies, and perhaps the most destructive. And this treatise seeks to show how nations have struggled mightily to break free of such illusions. For that we should applaud and encourage the author.

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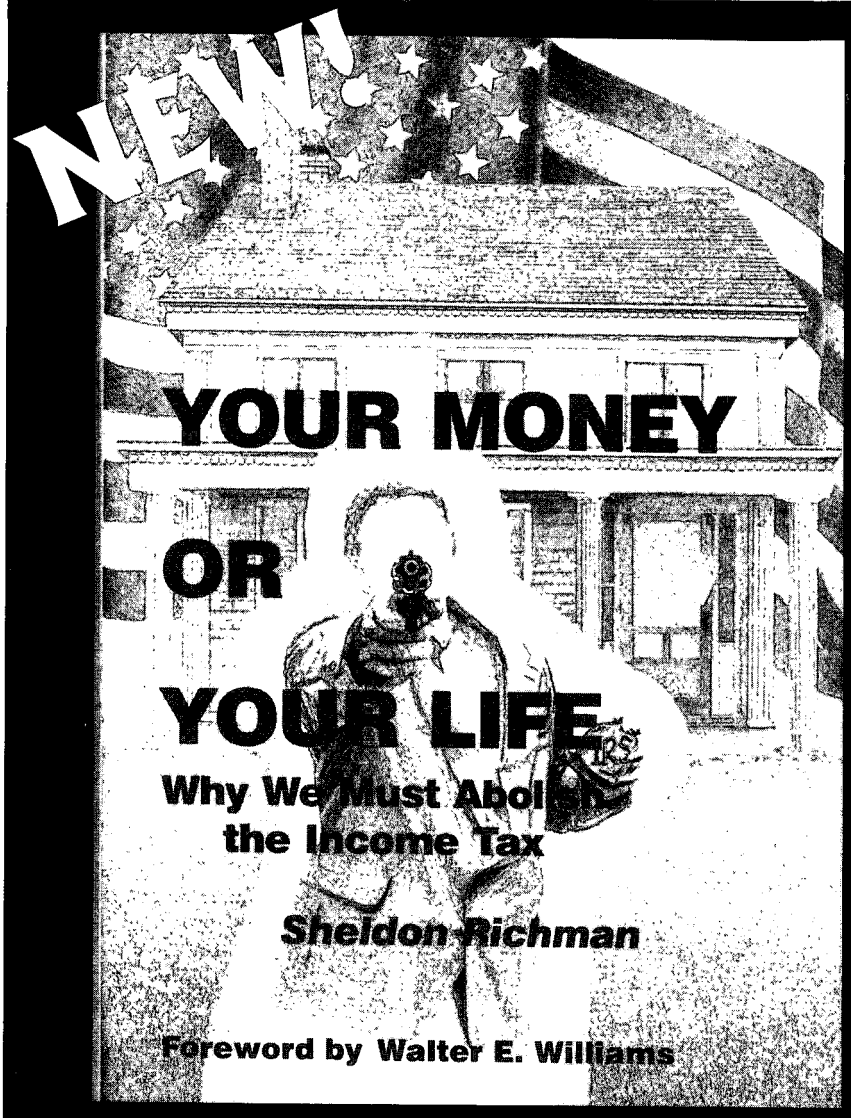

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Rational Natives

By Terry L. Anderson

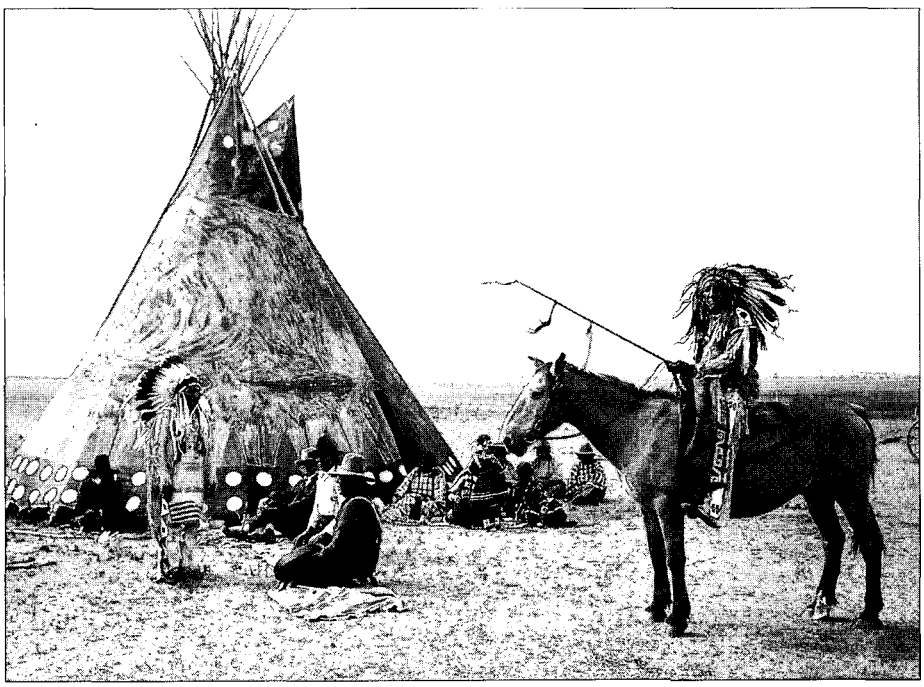
The Ecological Indian: Myth and History, by Shepard Krech III, New York: W.W. Norton, 318 pages, $27.95

One of my favorite places in Montana is Madison Buffalo Jump State Park near the Three Forks of the Missouri River. Standing in front of this cliff over which Indians drove buffalo for hundreds of years, I imagine the sound and sight of a thundering herd of the half-ton animals plunging over the cliff. Many would die from the fall, others would be crippled and have to be killed by Indians below, and some would crawl off to die. Signs at the park describe how the buffalo jumps were organized and depict how each part of the animal from the meat to the hoof to the hide was used. Framed by Montana's famous Big Sky and the Tobacco Root Mountains, the site can't help but conjure up a romantic image of American Indian life.

Shepard Krech's *The Ecological Indian* paints a very different picture—one far less romantic but more realistic. The Blackfoot word for such a place is *piskun*, and its literal meaning, "deep blood kettle," accurately describes the scene. Imagine 30, 60, 100—or even 1,000—dead and maimed beasts piled at the bottom of the cliff, blood flowing, hooves kicking, carcasses rotting in the hot sun. This is what you actually would have seen at a typical buffalo jump 250 years ago. Imagine the difficulty of butchering and preserving the meat—Krech estimates that if 600 died, the total could be as high as 240,000 pounds.

He vividly describes the likely scene at Olsen-Chubbuck, the most studied jump in Colorado, eight millennia ago: "As people butchered the animals, they ate the tongues, scattering the bones throughout the site. When it was over they had completely butchered the buffaloes on top, but they cut the ones beneath them less thoroughly, and hardly (if at all) touched the ones on the bottom, especially in the deepest parts of the arroyo." To complete the picture of camp life near a *piskun*, Krech, a Brown University anthropologist, reminds us that 200 to 300 people would be living near the stench of all that rotting meat without toilet facilities. Not surprisingly, diseases, especially dysentery, were common. Water was polluted, firewood would quickly be depleted, and grass would be overgrazed by horses.

Throughout *The Ecological Indian*, Krech systematically debunks popular myths—many of them promoted by politically motivated greens pushing draconian environmental measures—and instead brings reality to the history of American Indians. Krech provides us not simply with a better, more accurate understanding of how Native Americans related to nature. More generally, he provides us with a sense of how human beings have long interacted with nature. He also builds a foundation upon which we might build more workable ways of allocating and conserving scarce resources.



Realistic Portrait: Shepard Krech's well-researched and documented descriptions of Indians' use of fire, land, and hunting stand in stark contrast to the romantic view of Native Americans living in harmony with nature.

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As can be gleaned from his description of buffalo jumps, Krech's well-researched and documented descriptions of Indians' use of fire, land, and hunting stand in stark contrast to the romantic view of Native Americans living in harmony with nature, taking only what they needed out of some proto-environmentalist ethic of voluntary simplicity. He reproduces the 1971 Keep American Beautiful poster showing Iron Eyes Cody as the Crying Indian with the caption, "Pollution: it's a crying shame." Following on the heels of the first Earth Day in 1970, he notes, this picture became an icon of the environmental movement, one that helped cement in the popular imagination the idea that there were "fundamental differences between the way Americans of European descent and Indians think about and relate to land and resources." Krech is plainly skeptical of such ideas. Thus, he documents that Chief Seattle's widely reprinted speech about differences between Indian and white attitudes toward the environment "was written in 1970 by a freelance speechwriter." He also examines issues such as the possible role of Indians in

Pleistocene extinctions of large mammals, their burning of ancient forests, and their decimation of deer populations.

In each case, Krech relies on data instead of romance and draws his conclusions carefully. For instance, in referring to widespread accounts that Indians used every part of the buffalo, Krech states, "These accounts might not be wrong—in some instances people did indeed use thoroughly the animals they killed—only ungeneralizable." Use depended on relative availability. When buffalo were scarce, Indians conserved; when the animals were plentiful, Indians used only the choicest cuts of meat and left the rest for scavengers. Such a view of Indian behavior recreates Native Americans simply as rational human beings—hardly a bad thing, but one far removed from the Noble Savage mythos.

The Ecological Indian recreates Native Americans simply as rational human beings—hardly a bad thing, but one far removed from the Noble Savage mythos.

Krech is particularly strong on this point. Consider his description of the Indian use of fire, one greatly at odds with the idea that they were somehow more in sync with nature than Europeans. Indians burned trees regularly so they could cultivate the land and more easily hunt. Hence the old growth forests so revered by today's environmentalists were not even common when Europeans first arrived. Krech concludes: "Despite European images of an untouched Eden, this nature was cultural not virgin, anthropogenic not primeval, and nowhere is this more evident than in the Indian use of fire."

The Ecological Indian is what good science should be. It puts forth hypotheses, tests them with data, and draws conclusions only when they are supported by those data. If there's a fault with Krech's work, it's that he almost completely ignores the role of institutions in discussing how Indians interfaced with nature. In the case of beaver, he does note in passing that some tribes, such as the Cree, "restricted hunting in one another's areas as far back as the mid-eighteenth century" and that this encouraged conservation and responsible stewardship in response to the demand for pelts by Europeans. Unfortunately, he fails to carry this theme consistently through the book. That's a shame, since many of the problems faced by and solutions arrived at by Indians speak directly to contemporary conservation issues.

For instance, my own research shows that Southeastern and Southwestern Indians had property rights in land that encouraged agricultural productivity, and that California Indians had property rights to piñon forests that encouraged good stewardship. Similar research by law professor Bruce Johnsen of George Mason University shows that clan fishing rights to salmon streams in the Pacific Northwest led to selective harvesting that, in turn, allowed larger fish to pass upstream to spawn—a property rights system that explains why some streams in the Pacific Northwest have larger salmon to this day.

Of course, this research into institutional incentives developed by Indians doesn't undercut Krech's work. Rather, it complements it. Conservation depends on whether the institutions get the incentives right. Thanks to *The Ecological Indian*, we have a clearer, more realistic picture of the first Americans. By linking Krech's discussion of ecological and nonecological behavior to the institutional history of Indians, we gain even more: a better understanding of how we might use property rights to ensure good resource stewardship.

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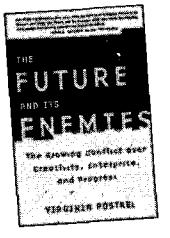

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Easy Money

Bank customers rebel at the price of convenience.

By Thomas W. Hazlett

"I don't think it's right for a business to charge money for a service it provides." So says "Theresa Bossy, student," in the online publication *The Onion.*

It so happens that *The Onion* is a satirical effort, so the "news" it publishes is merely farce. No such excuse is available to residents of San Francisco and Santa Monica, California. They and their elected officials live the Bossy mantra to its utmost. Last fall San Franciscans approved an initiative outlawing automatic teller machine fees for access to cash. In Santa Monica, the popular city council passed a law to the same effect.

That voters and elected officials may decide the appropriate market price for a service is a charming affectation in the nation's trendiest precincts. I know the reasoning well. Since first writing about the ATM fee controversy a couple of years back, I have received a stream of e-mails from disgruntled bank customers. Here's the standard take: "As a staunch capitalist, I oppose any attempt by the government to regulate private business activity. But ATMs *save* the bank money, because it doesn't have to pay a teller to deal with my transaction. To take advantage of the fact that I'm not able to go to my bank and have to withdraw cash elsewhere is just a consumer ripoff."

Embedded in this plea for help is what we shall call the Fallacy of the Movable Object. Just because Item X has certain properties at Point A doesn't mean that all those same properties remain at Point B. A corollary: location, location, location.

Where the consumer really does choose straight up between the ATM transaction and the teller interface—at the bank's own branch—the ATM operates for free (and, typically, more quickly and pleasantly). So the "ripoff" is literally somewhere else—between a bank teller and a *remote* ATM location. But now the situation is complicated, not least of all by the fact that keeping ready cash in convenient remote locations is both costly to the bank and valuable to customers.

The powers that be in San Francisco and Santa Monica disagreed, and staged rebellions to prove their point. Immediately, California's two largest banks, Wells Fargo and Bank of America, staged a revolt of their own and axed remote ATM network access. Class, can anyone explain why at a price of $0, quantity supplied is nil?

Some Santa Monicans, at least, know the answer. Consider George Safaris, an S.M. resident who talked with *The New York Times.* He didn't have a problem with the $1.50 the banks charged for producing cash on demand. In fact, his troubles began only when the price for cash money was ruled illegal—and his service disappeared. "I'm happy to pay the small fee for convenience," he fumed. "You spend $5 just to park your vehicle."

San Francisco and Santa Monica outlawed ATM fees. That voters or elected officials may decide the appropriate market price for a service is a charming affectation in the nation's trendiest precincts.

Of course, one can look about the economy and see pricing patterns which seem odd. Airlines use complex revenue optimization programs, attempting to fill every seat at the maximum price possible. Although the cost of providing service is identical across all customers in the same class of service, everyone pays differently. How wide can the spread get? If you have the stomach for it, ask your seatmates how much they shelled out for the ride the next time you reach cruising altitude.

What is puzzling is how docile voters are when victimized by true rate gouging. Consider plain old telephone service. For decades, regulators have set the price of local telephone service artificially low. This is especially true in fancy suburban neighborhoods or far-out rural communities, where low population density makes systems expensive to build. To pay for this, regulators have imposed a system of artificially high long-distance and business charges. (You may have noticed that if you install a "residential" line in your house, it will cost something like $20 a month, while the same exact "business" line costs $40.)

The policy is perverse. While failing to noticeably increase telephone penetration (steady at about 95 percent of U.S. homes for decades now), it has driven long-distance charges much higher, hurting low-income people, who tend to spend a fairly large percentage of total income on long-distance or international calling. It has also stymied competition for residential telephone service (why compete where prices are already below cost?) and deprived customers of advanced services that such competition would bring. And businesses, which pay more in telephone charges, stick consumers with higher prices.

This public policy debauchery was actually juiced up in the Telecommunications Act of 1996, a bipartisan piece of legislation. Meanwhile, banks investing millions in new ATM networks for customers feel the anger of customers in San Francisco and Santa Monica, who can only get increasingly surly. After all, now they're driving around all day trying to score some cash.

Contributing Editor Thomas W. Hazlett (hazlett@primal.ucdavis.edu) is a resident scholar at the American Enterprise Institute and a professor of economics at the University of California at Davis.

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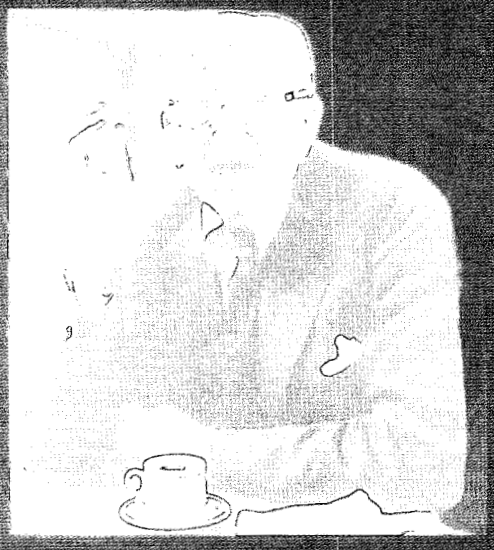

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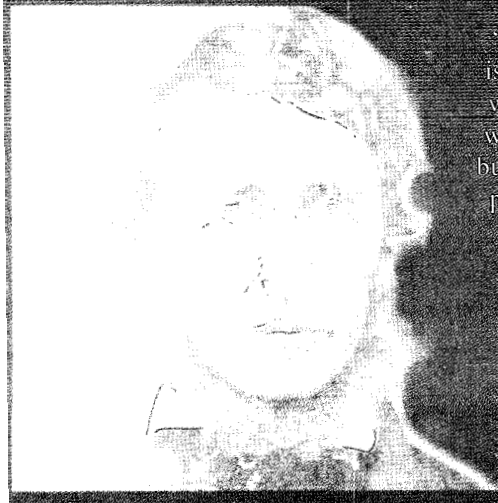

"The State is not armed with superior wit or honesty, but with superior physical strength. I was not born to be forced. I will breathe after my own fashion. Let us see who is strongest."

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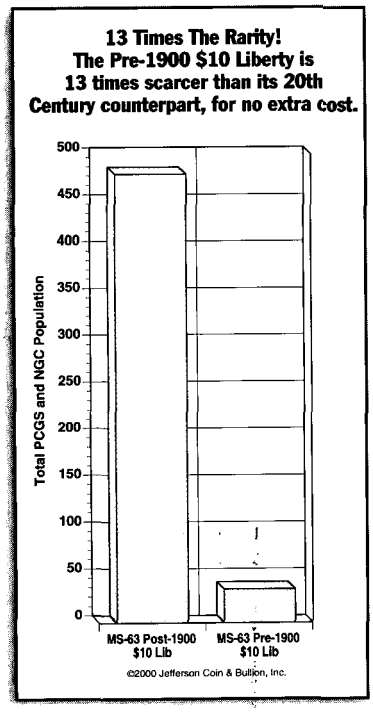

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